IMPROVING MEMBER'S PARTICIPATION IN THE ANNUAL GENERAL MEETING UNDER NIGERIAN CORPORATE LAW

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ABSTRACT

Members of a company have the rights to receive notice and participate in Annual General Meeting (AGM). However, various challenges affect members' participation in the AGM in Nigeria. These include delay in receiving notices of meeting; difficulty in accessing the place of AGM; lack of recognition of information and communication technology (ICT) use in sending notices of meeting; and inadequate remedies. This study seeks to examine various laws, cases, rules, codes of corporate governance and the opinions of experts relating to member's participation in the AGM which are rights to receive notice of AGM; member's remedies; and the application of the ICT in the AGM. The study adopts doctrinal and comparative research methodology. The doctrinal aspect is library based complemented by seventeen semi-structured interviews, while the comparative aspect involves reference to relevant company law provisions in Malaysia. The analysis of data employs doctrinal, comparative and thematic. The findings indicate that poor postal services, inability of the members to update their current addresses, and limited circulation of notices published in newspapers are part of the reasons that result to delay in receiving notices of AGM. Similarly, the practice of holding the AGM at the states where the corporate head office is situated becomes a constraint for members in accessing the place of meeting. Furthermore, member's awareness regarding their rights, remedies and enforcement is low. In addition, the Companies and Allied Matters Act 1990 has no provisions that recognize the use of ICT in AGM. To improve on this, the law must be reformed in such a way that members would receive notices of AGM on time and recognised the application of the ICT in the AGM. The law must also make upward review of all the monetary fines to sanction violation of member's rights. Similarly, management, shareholder executives and regulators must enlighten members regarding their rights, remedies and how to enforce the remedies.

Keywords: Annual General Meeting, Corporate Governance, Notice of Meeting, Nigeria.

ABSTRAK

Ahli-ahli di dalam sesebuah syarikat berhak untuk menerima notis dan mengambil bahagian dalam Mesyuarat Agung Tahunan (MAT). Meskipun begitu, terdapat pelbagai cabaran yang boleh menjejaskan penyertaan ahli-ahli syarikat di MAT di Nigeria. Ini termasuklah kelewatan dalam menerima notis menghadiri mesyuarat; kesukaran untuk sampai ke lokasi MAT; kurang pengiktirafan terhadap penggunaan teknologi maklumat dan komunikasi (ICT) dalam menghantar notis mesyuarat; dan remedi yang tidak memadai. Kajian ini mengkaji pelbagai undang-undang, kes, peraturan, kod tadbir urus korporat dan pendapat pakar mengenai penyertaan ahli-ahli syarikat di dalam MAT iaitu hak mereka untuk menerima notis MAT; remedi ahli dan penggunaan ICT di dalam MAT. Kajian ini menggunapakai kaedah penyelidikan doktrin dan perbandingan. Aspek kaedah doktrin adalah berdasarkan penyelidikan perpustakaan yang disokong oleh tujuh belas temubual separa berstruktur, manakala aspek perbandingan pula melibatkan rujukan kepada peruntukan-peruntukan undang-undang syarikat Malaysia yang berkaitan. Analisis data telah dilaksanakan mengikut tema, kandungan dan kaedah perbandingan. Penemuan kajian menunjukkan perkhidmatan pos yang lemah, kegagalan ahli-ahli dalam mengemaskini alamat terkini dan pengedaran notis di dalam surat khabar yang terhad merupakan sebahagian penyebab utama ke atas kelewatan ahli-ahli menerima notis kehadiran MAT. Pada masa yang sama, amalan mengadakan MAT di mana pejabat utama korporat berada telah menjadi kekangan kepada ahli-ahli untuk sampai ke tempat mesyuarat diadakan. Tambahan pula, kesedaran ahli-ahli tentang hak mereka, remedi dan penguatkuasaan juga adalah rendah. Sebagai tambahan, tiada peruntukan dalam Companies and Allied Matters Act 1990 yang mengiktiraf penggunaan ICT dalam MAT. Untuk memperbaiki keadaan ini, undang-undang sedia ada hendaklah diperbaharui dalam cara di mana ahli-ahli akan menerima notis untuk menghadiri mesyuarat pada masa ditetapkan dan mengiktiraf penggunaan ICT di dalam MAT. Undang-undang sedia ada juga hendaklah membuat penelitian terhadap kesemua denda kewangan bagi menghukum perlanggaran hak-hak ahli. Selain itu, pengurusan, pemegang saham eksekutif dan penggubal undang-undang perlu memberikan kesedaran kepada ahli-ahli syarikat berkenaan hak mereka, remedi dan tatacara untuk menguatkuasakan remedi tersebut.

Kata Kunci: Mesyuarat Agung Tahunan, Tadbir Urus Korporat, Notis Mesyuarat, Nigeria.

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TABLE OF CONTENTS

LST OF TABLES

LIST OF ABBREVIATIONS

AARNS	Association for the Advancement of the Right of Nigerian Shareholders
A.C.	Appeal Cases
AGM	Annual General Meeting
ALL ER	All England Reports
ALL NLR	All Nigeria Law Reports
ATK	Atkin's Chancery Report
BCLC	Butterworths Company Law Cases
CA	Court of Appeal
CA 2016	Companies Act
CAC	Corporate Affairs Commission
Cal. W. Int'l L.J	California Western International Law Journal
CAMA 1990	Companies and Allied Matters Act
CCGBDHN 2014	Code of Corporate Governance for Banks and Discount Houses
CCGIIN 2009	Code of Corporate Governance for Insurance Industry in Nigeria
CCGPCN 2011	Code of Corporate Governance for Public Companies in Nigeria
Ch	Chancery
Ch.D	Chancery Division
CLJ	Current Law Journal
ECWA Civ	England and Wales Court of Appeal (Civil Division)
ENLR	Eastern Nigeria Law Report
EOGM	Extraordinary General Meeting
ER	English Reports
FHCLR	Federal High Court Law Reports
FHCN	Federal High Court of Nigeria
FSC	Federal Supreme Court Reports
FWLR	Federal Weekly Law Reports
ICT	Information and Communication Technology
ISA	Investment and Securities Act
ISAN	Independent Shareholder Association of Nigeria

KB	Law Report, King's Bench
L Q Rev.	Law Quarterly Review
La. L. Rev.	Louisiana Law Review
LFN	Laws of the Federation of Nigeria
LLR	Lagos Law Reports
LPELR	Law Pavilion Electronic Law Report
LRN	Law Report of Nigeria
LTD	Limited Liability Company
MCCG 2017	Malaysian Code on Corporate Governance
MLJ	Malayan Law Journal
N.L.R	Nigeria Law Report
N.M.L.R	Nigerian Monthly Law Report
N.S.C.C	Nigerian Supreme Court Cases
NCA 2003	Nigerian Communications Act
NCC	Nigerian Communications Commission
NCLR	Nigerian Current Law Review
NSE	Nigerian Stock Exchange
NWLR	Nigeria Weekly Law Report
Para	Paragraph
PLC	Public Limited Company
Pt	Part
Q.B	Queen's Bench
Q.B.D	Queen's Bench Division
QLRN	Quarterly Law Reports of Nigeria
R	Respondent
RM	Malaysian Ringgit
RRNSE 2015	Rules and Regulations of the Nigerian Stock Exchange
SC	Supreme Court
Sch	Schedule
SCNJ	Supreme Court of Nigeria Judgments
SEC	Securities and Exchange Commission
SECRR 2013	Securities and Exchange Commission Rules and Regulations
Tul L. Rev.	Tulane Law Review
UK	United Kingdom

LIST OF CASES

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30. Daniels v. Insight Eng. Co. Ltd (2002) 10 NWLR (Pt. 775) 231.
31. Dato Mohd Tahir bin Abdul Rahim & Ors v. Sharikat Permodalan Kebangsaan Bhd & Ors (1991) 2 CLJ 1155.
32. Delta Steel (Nigeria) Ltd v. American Computer Technology Inc (1999) 4 NWLR (Pt. 597) 53.
33. Dunlop Nigerian Industries Ltd. v. Forward Nigeria Enterprises Ltd. & Anor (1976) A. L. R Comm. 243.
34. East v. Bennet Bros Ltd (1911) 1 Ch 163; 27 TLR 103.
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39. Elufioye v. Halilu (1993) 6 NWLR (Pt. 301) 570.
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43. FATB v. Ezegbu (1994) 9 NWLR (Pt. 367) 149.
44. First Nominee (Pte) Ltd v. New Kok Ann Realty Sdn Bhd & Anor (1983) 2 MLJ 76.
45. Foo Tong Eng v. Po Gun Suan (1982) 1 MLJ 337.
46. Foss v. Harbottle (1843) 2 Hare 461.
47. Globe Fishing Industries Ltd v. Coker (1990) 7 NWLR (Pt. 162) 265.
48. Gombe v. P.W. (Nig.) Ltd (1995) 6 NWLR 402 SC.
49. Grancy Property Ltd v. Manala (2013) ZASCA 57.
50. Guaranty Trust Bank Plc. & Anor v. Udoka Anyanwu (2011) LPELR-4220 CA
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59. Jackson v. Horizon Holidays Ltd (1975) 1 WLR 1468.
60. Jarvis Motors (Harrow) Ltd & Anor v. Carabott & Anor (1961) 1 WLR 1101.
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62. Jerry Ngiam Swee Beng v. Abdul Rahman bin Mohd Rashid & Anor (2003) 6 MLJ 448.
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64. John v. Rees (1969) All ER 560.
65. Johnson v. Gore, Wood & Co (2001) 1 All ER 481 HL.
66. Kotoye v. Saraki (1994) 7 NWLR (Pt.357) 414.
67. Lee Eng Eow (Director of Lee Guat Cheow & Co Sdn Bhd) v. Mary Lee (Executrix of the Estate of Low Ai Lian) & Ors (1999) 3 MLJ 48.
68. Lee Nyuk Heng v. Pembangunan Ladang Hassan Sdn Bhd (2002) MLJU684.
69. Leong Ah Hong v. Hup Seng Co Ltd (1963) MLJ 164.
70. Lim Hean Pin v. Thean Seng Co Sdn Bhd & Ors (1992) 2 CLJ 828; (1992) 2 MLJ 10.
71. M. A. Omisade & Ors v. Harry Akande (1987) LPELR 2639 SC.
72. Mahesan & Ors v. Ponnusamy & Ors (1994) 3 MLJ 312.
73. Maja v. Samouris (2000) 7 NWLR (Pt. 765) 78.
74. Mascon Rinota Sdn Bhd & Ors v. Rinota Construction Sdn Bhd (2016) 4 CLJ 854.
75. Merchantile Holdings Ltd (1980) 1 WLR 227.
76. Monnington v. Easier Plc (2005) EWHC 2578 Ch; (2006) 2 BCLC 283.
77. Musselwhite v. C.H Musselwhite and Sons Ltd (1962) Ch 964.
78. N.I.B. Invest. West Africa v. Omisore (2006) 4 NWLR (Pt. 969) 122 C.A.
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85. Nyuk Fong & Ors v. Pan Global Equities Sdn Bhd (1991) MLJ 152.
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89. Okeowo & Ors v. Milgliore & Ors (1979) 11 SC 138.
90. Okoya v. Santili (1990) 21 NSCC 367; (1990) 2 NWLR (Pt. 131) 172.
91. Omisade v. Akande (1987) LPELR 2639 SC.
92. Onagoruwa v. Akinyemi (2001) 13 NWLR (Pt. 729) 38.
93. Ononye & Ors v. Chukwuma (2005) LPELR-7526 C.A.
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103. Puddephatt v. Leith (1916) 1 Ch 200.
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105. R v. West Sussex Quarter Sessions (1973) 3 All ER 289.
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107. Ranjeet Singh & Anor v. Zavarco Plc & Ors (2016) 2 CLJ 975.
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109. Re Hector Whaling Ltd (1936) Ch. 208.

110. Re London Flats Ltd (1962) MLJ 438.
111. Re- Mackenzie and Co Ltd (1916) 2 Ch 450.
112. Re Pearce Duff Co Ltd (1960) 1 WLR 1014.
113. Re Scottish & Australian Chartered Bank (1893) 3 Ch 385.
114. Re Taurine Co (1883) 25 Ch D 118.
115. Re Thomas; ex parte Warner (1911) WN 123.
116. Re West Canadian Collieries Ltd Ch 370 (1962).
117. Re-El-Sombrero Ltd (1958) Ch 900.
118. Re-Moorgate Merchantile Holdings Ltd (1980) 1 WLR 277.
119. Rinota Sdn Bhd & Ors v. Rinota Construction Sdn Bhd (2016) 4 CLJ 854.
120. Sadgrove v. Bryden (1907) 1 Ch 318.
121. Salomon v. Salomon (1879) AC 22.
122. Sari Artists Film Productions Sdn Bhd v. Malaysia Film Industries Sdn Bhd (1974) MLJ 123.
123. Scottish Cooperative Wholesale Society Ltd v. Meyer (1959) A.C. 324.
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126. SJA Bhd & Anor v. HBL Nominees (Tempatan) Sdn Bhd (2002) 7 CLJ 580.
127. Smith v. Paringa Mines Ltd (1906) 2 Ch 193.
128. Sparks Electric (Nig.) Ltd v. Ponmile (1986) 2 NWLR (Pt. 23) 516.
129. Speechley and Others v. Alott and Others (2014) EWCA Civ 230.
130. Starcola (Nigeria) Ltd & Anor v. Madam Taibatu Adeniji & Ors (1972) LPELR-3114 SC.
131. Sugarman and Others v CJS Investments Llp and Others (2014) EWCA Civ 1239.
132. Tan Chong Teck v. Gan Seong Chin & 5 Ors (2014) 1 LNS 17.
133. Tan Guan Eng v. BH Low Holdings Sdn Bhd & Ors (1992) 1 MLJ 105.
134. Tanimola & Ors v Surveys & Mapping Geodata Ltd & Ors (1995) 6 NWLR (Pt 403) 617.
135. Tika Tore Press Ltd v Abina (1973) 4 S.C. 63; (1973) 1 NMLR 220.
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140. Union Bank (Nig). Ltd v. Penny Mart Ltd (1992) 5 NWLR (Pt.240) 228.
141. United Investment & Finance Ltd v. Tee Chin Yong (1967) 1 MLJ 31.
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144. Wallersteiner v Moir (No 2) (1975) QB 373.
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146. Wilson v. Okeke (2011) 3 NWLR (Pt. 1235) 421-635.
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LIST OF STATUTES

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2. Companies Act 2016
3. Constitution of the Federal Republic of Nigeria 1999 as amended
4. Investment and Securities Act 2007
5. Code of Good Corporate Governance for Banks and Discount Houses in Nigeria 2014
6. Code Corporate Governance for Public Companies in Nigeria 2011
7. Code of Corporate Governance for Insurance Industry in Nigeria 2009
8. Malaysian Code on Corporate Governance 2017
9. Companies Proceedings Rules 1992
10. Securities and Exchange Commission Rules and Regulations 2013
11. Rules and Regulations of the Nigerian Stock Exchange 2015

LIST OF APPENDICES

CHAPTER ONE

INTRODUCTION

1.1 Background of the Study

The Companies and Allied Matters Act 1990 (CAMA 1990) is the principal legislation regulating company affairs in Nigeria.[1] The CAMA 1990 does not define the meaning of a company. However, it mentioned about requirements for formation and registration of a company which requires a minimum of two or more persons to register or incorporate a company.[2] A company after its incorporation acquires the status of a corporate entity, with all powers vested in a corporation. This principle, arguably, was enunciated in the famous case of *Salomon v. Salomon*,[3] where the court held that a company has its own separate legal personality distinct from its members/shareholders. Thus, the incorporation of a company has many effects on its existence.

This includes perpetual existence; right to institutes action in a court of law; the right own and dispose property; limit its member's liability.[4] In this regard, Buckley LJ in

[1] Anthony Idigbe, "Review of CAMA 1990: Issues in Corporate Governance Audit Committee and Auditor Independence," Being paper delivered at Nigerian Accounting Standards Board 4th Annual Corporate Financial Reporting Summit and Dinner held on the 14th day of November 2007 at Sheraton Hotels and Towers Ikeja, Lagos; CAMA 1990 has been incorporated into the Laws of the Federation Cap C20 2004.

[2] s. 18 CAMA 1990; the term company/corporate mean have the same meaning in this study.

[3] *(1879) AC 22;* Dewey John, "The Historic Background of Corporate Legal Personality," *The Yale law journal* 35, no. 6 (1926): 655-673; Zuhairah Ariff Abd Ghadas, "Real or Artificial-Jurisprudential Theories on Corporate Personality," *US-China Law Review* 4 (2007): 6.

[4] Halyani Hassan, Zuhairah Ariff Abd Ghadas and Nasarudin Abdul Rahman, "'The Myth of Corporate Personality: A Comparative Legal Analysis of the Doctrine of Corporate Personality of Malaysian and Islamic Laws," *Australian Journal of Basic and Applied Sciences* 6 no. 11 (2012): 191-198; s. 37 CAMA 1990; *M. A. Omisade & Ors v. Harry Akande (1987) LPELR 2639 SC* pronounced on the effect of incorporation.

the case of *Continental Tyre and Rubber Co (Great Britain) Ltd v. Daimler Co Ltd*[5] had this to say:

> The artificial legal person has no physical existence. It exists only in contemplation of law. It has neither body parts nor passions. It cannot wear weapons nor serve in the wars. It can be neither loyal nor disloyal. It cannot compass treason. It can be neither friend nor enemy. Apart from its corporators it can have neither thoughts nor wish, nor an intention, for it has no mind other than the mind of the corporators.

The artificial personality of a corporation exists only as a matter of law, in that a company has no physical existence and cannot appear in court as a natural person.[6] This principle has been applied in a plethora of decided cases in Nigeria, including *Trenco (Nigeria) Ltd v. African Real Estate Ltd,*[7] *Anyaegbunam v. Osaka,*[8] *Tsokwa Oil Marketing Co. v. U.T.C. (Nig.) Plc.*[9] Similarly, this principle has been applied in various court decisions in Malaysia, including *Abdul Aziz bin Atan & Ors v. Ladang Rengo Malay Estates Sdn Bhd,*[10] *Lee Eng Eow (as director of Lee Guat Cheow & Co Sdn Bhd) v. Mary Lee (as executrix of the estate of Low Ai Lian) & Ors*[11] among others.

Subsequently, in the management of company affairs, two important organs exist; the management (board of directors) on the one hand and members of the company at a general meeting on the other hand.[12] This is a sequel to the fact that, it is not possible for all members to participate in running the affairs of the company. The management as a (board of directors) is therefore has a duty to act in the best interest of the company

[5] *(1915) 1 KB 813.*
[6] *Continental Tyre and Rubber Co (Great Britain) Ltd v. Daimler Co Ltd (1915) 1 KB 813.*
[7] *(1978) 1 LRN 146 at 153.*
[8] *(2000) 3 SC 1.*
[9] *(2002) 12 NWLR (Pt 52) 437 C.A.*
[10] *(1985) 2 MLJ 165.*
[11] *(1999) 3 MLJ 481.*
[12] *Credit Development Pte Ltd v. IMO Pte Ltd (1993) 1 SLR 68.*

as a whole.[13] The management must protect the interest of all members and to act towards achieving the greatest economic goal.[14] The board is responsible for running the day to day activities of the company and therefore accountable to members during a general meeting of the company.[15] The members must be treated fairly, regardless of the percentage of their shareholding in the company.[16] In the case of *Starcola (Nigeria) Ltd & Anor v. Madam Taibatu Adeniji & Ors*,[17] the Supreme Court of Nigeria held that, for someone to become a member of a company, he must hold number of shares or agreed to take up certain number of shares and must have his name registered in the register of members. This means that a member is such person who in addition to having shares in a company, equally has his name registered in the company's register of members.

Therefore, members have special position in a company, being owners.[18] The nature of ownership essentially depends on the extent of shareholding in a particular company, which give rise to having majority members on one hand and minority members on the other.[19] However, members are generally entitled to some basic rights

[13] Halyani Hassan and Zuhairah Ariff Abd Ghadas, "Ownership v Control: Fault lines in Directors-Shareholders Relationship: A special Reference to Malaysian Family Business," International Conference on Corporate Law (ICCL) Surabaya, Indonesia (2009): 1-14 at 9.
[14] Kala Anandarajah, *Corporate Governance*, *Practical Approach* (Asia: Butterworth, 2001), 15-16.
[15] *John Shaw & Sons (Salford) Ltd v. Shaw (1935) 2 KB 113.*
[16] Stephen, A. Ejuvbekpokpo and Benjamin U. Esuike, "Corporate Governance issues and its Implementation: the Nigerian Experience," *Journal of Research in International Business Management* 3(2), no. 2251-0028 (February 2013): 53-57 Available online @http://www.interesjournals.org/JRIBM (accessed 23 June 2015).
[17] *(1972) LPELR-3114 S.C.*
[18] J. A. C. "Hetherington, Fact and Legal Theory: Shareholders, Managers, and Corporate Social Responsibility," *Stanford Law Review* 21, No. 2 (Jan. 1969): 248-292. http://www.jstor.org/stable/1227653; Henry Hansmann & Reinier Kraakman, *The Essential Role of Organizational Law*, 110 *YALE L.J*. 387, 392 (2000); Solomon, Lewis D. & Alan R. Palmiter, *Corporations: Examples & Explanations*, 3rd ed. (1999).
[19] Olayinka Adenikinju, Folasade Ayonrinde and Adeola Adenikinju, "Analysis of Ownership Structure in Nigeria Quoted Companies and its Correlation with Corporate Performance," *African Journal of Economic Policy* 10(2) (2003): 57-80.

under the law.[20] These rights are so essential in that they are attached as rights each member has by virtue of his shareholding in a company.[21] Thus, a member has the right to access relevant information as to the performance of the company. This is seen through the statutory report which is normally presented each year. This equally helps members to know the value of their investment in the company.[22] The Supreme Court of Nigeria re-affirmed the status of members when it held that, although directors hold shares; they only held them for the benefit of members.[23] The relationship existing between members and the company is a contractual one; as contained in the article of association backed by statutory provisions. In view of that, members generally have the power to influence corporate decisions; and these powers were contained in the company's article of association,[24] which gives direction regarding how certain affairs of the company is to be conducted.[25]

[20] "Shareholders Rights and Responsibilities, Nigerian Securities and Exchange Commission," https://www.google.com/search?q=Shareholders+Rights+and+Responsibilities%2C+Nigerian+Securities+and+Exchange+Commission.+www.proshareng.com&ie=utf-8&oe=utf-8www.proshareng.com (accessed August 5, 2015).
[21] Stephen and Benjamin, fn.,16.
[22] Dorothy Nelson, "The Dilemma of the Shareholders under the Nigerian Company Law," *Journal of Law, Policy and Globalization* 37 (2015): 89. www.iiste.org ISSN 2224-3240 (Paper) ISSN 2224-3259 (accessed June 20, 2016).
[23] *Kotoye v. Saraki (1994) 7 NWLR (Pt.357) 414 at 467.*
[24] Lucian Arye Bebchuk, "The Case for Increasing Shareholder Power," *Harvard Law Review* 118, no. 3 (Jan. 2005), 833-914: http://www.jstor.org/stable/4093350 (accessed June 20, 2016).
[25] O. Kahn-Freund, "Articles of Association and Contractual Rights," *The Modern Law Review* 4 no. 2 (Oct. 1940): 145-148 at 148. http://www.jstor.org/stable/1090256

The CAMA 1990 empowered members with certain rights some of which are shown in Table 1 below:

Table 1.1 Rights of Members of a Company under CAMA 1990

Section	Rights of Members
Section 115 CAMA 1990	Right to register shares in the name of a member. This right ensures that ownership right of a member is duly protected
Sections 146 & 151 CAMA 1990	Right to transfer shares, subject to rights of pre-emption and other necessary approvals
Section 87 CAMA 1990	Right to seek relevant information from the company on regular basis and timely and to inspect company's register.
Sections 219, 224, 225, 226 & 227 CAMA 1990	Right receive notice of meeting, to participate and vote at meetings of the company. This is the avenue through which a member exercises his right through voting by resolution.
Section 42 CAMA 1990	Right to have a copy of company's memorandum and article of association (as well as any alteration thereto).
Sections 247 & 357	Right to decide the membership of the board, auditors and to amend company's article where necessary.
Section 379 CAMA 1990	Right to participate in the the distribution of dividends and to share profits when dividends are declared.
Section 385 CAMA 1990	Right to institute an action in court to claim dividends.
Section 143(1) & (3) CAMA 1990	Right of members with preference shares to more than one vote.

As earlier mentioned,[26] while directors are under fiduciary obligation to protect the best interest of the company, members do not have corresponding obligation.[27] In exercising voting right, a member has no duty to the company. He merely exercises property right over his shares, as personal property. He is not generally obliged to respect the interest of other members.[28] Thus, in the case of *Northern Countries Securities Ltd v. Jackson & Steeple Ltd*[29] it was held that a director when voting at board of directors meeting is under fiduciary obligation to the company, but a member is not so obliged, as he merely exercises his right to property. Therefore, a director shall act fairly in the interest of the company.

Consequently, there are ways through which a company can take a decision. This may be through member's meeting or board of director's meeting. Member's meeting signifies the gathering of members that have right to attend and vote in such meeting.[30]It is an avenue through which director's conducts are being scrutinised.[31] Through this medium, members of the company exercise their ownership rights, including the right to remove erring directors by a simple majority of votes. This further checkmate the activities of the management.[32]

[26] O. Ogechukwu Ajoku, "Demythification of the Organic Theory of Company Law through the Lens of Corporate Governance Jurisprudence: Revisiting Shareholders Activism: Case Study of Nigeria's Company and Allied Matters Act 2004." http://www.academia.edu/4496715/ (accessed June 22, 2015).
[27] John R. Boatright, "Fiduciary Duties and the Shareholder-Management Relation: or, What's so Special about Shareholders?" *Business Ethics Quarterly* 4, no.04 (October 1994):393-407. DOI: http://dx.doi.org/10.2307/3857339 Published online: 23 January 2015, (accessed July 6, 2015).
[28] Robin Hollington Q.C., *Hollington on Shareholder's Rights,* 17th Edtn. (England: Sweet & Maxwell, 2013), 9.
[29] *(1974) 1 WLR 1133.*
[30] Nor Hayati Abdul Samat and Hasani Mohd Ali, "Legal Perspective of Shareholders' Meeting in the Globalised and Interconnected Business Environment," Global Conference on Business & Social Science-2014, GCBSS-2014, 15th & 16th December, Kuala Lumpur, *Procedia - Social and Behavioral Sciences*,172 (2015): 762-769 at 763.
[31] Proctor, G., and Miles, L., *Corporate Governance* (London: Cavendish Publishing Limited, 2003).
[32] See also Nor Hayati and Hasani, fn. 30.

In the English case of *Sharp v. Dawes*,[33] meeting was defined as coming together of two or more persons with the aim of discussing and acting upon some matter(s) in which they have a common interest. In this regard, CAMA 1990 generally recognised three main classes of company meetings, namely: statutory[34] and annual general meeting (AGM),[35] while the third class is extra ordinary general meeting (EOGM).[36] The statutory meeting under CAMA 1990 is to be held within six months after incorporation of a company and directors are mandated to give twenty-one days notice prior to the date of meeting and forward a copy of the statutory report to be presented to all members. The meeting should take place not later than three months from the date the company commences business. On the one hand, AGM must be held every year, apart from any meeting held by the company. A period of fifteen months shall elapse between first AGM and the other, while EOGM may be called at any time to address emergency cases that may arise, which are so urgent that cannot wait until next AGM.

The relevance of meetings to corporate governance is traceable to the economic crisis in the 20th century that calls for sound corporate practices in the world, through legislation and various codes of governance[37] not only in Nigeria but across the globe. It was believed that members are the most important organ in a company; hence they control the activities of the management.[38] This is only possible by given them the

[33] *(1876) 2 QBD 26.*
[34] s. 211 CAMA 1990.
[35] s. 213 CAMA 1990.
[36] s. 215 CAMA 1990.
[37] See also Nor Hayati and Hasani, fn. 30.
[38] Ross Grantham, "The Doctrinal Basis of the Rights of Company Shareholders," *The Cambridge Law Journal*, 57/03 (1998): 554-588. DOI: http://dx.doi.org/ (accessed April 13, 2016).

opportunity to attend and vote during AGM,[39] either personally or by proxy. This is important particularly that members are argued to have a limited right in companies these days.[40] Thus, good corporate governance would ensure effective communication and allows members to exercise their voting rights.[41] In Nigeria, good corporate has the effect of advancing Nigerian economy through Foreign Direct Investment (FDI), since investors generally analyse the expected investment return and the level of risk tolerance before investing in a company.[42] In contrast, poor governance and improper control of management have the resultant effect of corporate collapse.[43]

Specifically, AGM is regarded as an avenue through which members meet face to face in order to take major business decisions including the exercise of powers to appoint and remove directors, to amend company's memorandum and article of association and to receive information and reports from directors.[44] It gives members the opportunity to decide whether the required quorum is attained so that decision may not turn out to be worthless.[45] The general meeting of companies is said to contribute

[39] Mohamad Rizal Salim and Yee Shyun Ong, "The Law of Shareholders' Meetings in Malaysia," *International Company and Commercial Law Review (2009).* < http://ssrn.com/abstract=1462686> 16 April 2010 (accessed 23 August 2015).

[40] Bainbridge, Stephen M., "Director Primacy and Shareholder Disempowerment," *Harvard Law Review* 119. UCLA School of Law, Law-Econ Research Paper No.05-25 (2006). Available at SSRN: http://ssrn.com/abstract=808584 (accessed 13 April 2016).

[41] "Australian Parliamentary Joint Committee on Corporations and Financial Services Report (2008)". http://apo.org.au/source/parliamentary-joint-committee-corporations-and-financial-services (accessed 21 August 2015).

[42] Amos N. Dombin, "Role of Corporate Governance in Attracting Foreign Investments in Nigeria," *International Letters of Social and Humanistic Sciences* 8(2) no. 2300-2697 (2014): 148-157. Available online at www.ilshs.pl

[43] Simisola Iyaniwura and Wole Iyaniwura, "The Nature of Shareholding in Nigeria: Evidence from the Banking Crisis, *Global Journal of Management and Business Research*: *(B) Economics and Commerce* 13 no.5 Version 1.0 (2014) Online ISSN: 2249-4588 & Print ISSN: 0975-5853 (accessed October 16, 2015).

[44] De Jongh, Joahn M., "Shareholder Activists *avant la lettre:* The Complaining Participants in the Dutch East India Company 1622-1625," as cited in Jonathan G.S. Koppell ed., *Origins of Shareholder Advocacy*, (New York: Palgrave Macmillan, 2011).

[45] s. 232 CAMA 1990.

greatly in enhancing good corporate governance by making directors more transparent and accountable.[46]

The essence of serving notice of meeting on members of a company is to give them sufficient information which describes the nature of a scheduled meeting and also to enable members to decide on whether to vote at the meeting or not. In order to sanction voting rights of members, the notice must be attached with a "proxy form" which enable members whether to attend and vote at the meeting personally or be represented by proxy.[47] The rights of members to receive notice of meeting and to attend AGM are well recognised under CAMA 1990. Thus, member's right of attendance is linked with voting right and the company's article must protect these rights, except where a member is unable to pay for all or other sums payable in respect of shares (after call has been made by the company).[48]

On one hand, the use of information communication technology (ICT) is developing in almost every sector including facilitating fast communication between members of the company and the management through adequate and prompt notice of meeting.[49] However, even with this development, AGM has not achieved its aim as an avenue where members come together to deliberate and resolved on matters affecting the company because they do not actively participate in meetings. In this regard, Ahmad

[46] Sabrina Bruno, "Legal Rules, Shareholders and Corporate Governance: the European Shareholder Rights Directive and its Impact on Corporate Governance of Italian Listed Companies; The Telecom S.P.A. Case," *Corporate Ownership & Control* 12, no. 2 (Winter 2015): 405.
[47] Y. H. Badmus, *Corporate Law Practice* (Enugu Nigeria, Chenglo Limited: 2009), 269.
[48] s. 81 CAMA 1990.
[49] Bayo Atte, "Enhancing Shareholders Participation in Company Meetings in Nigeria through Application of Information Technology," *Journal of Humanities and Social Science (IOSR-JHSS)* 20 no. 9 Ver. VI IOSR (Sep. 2015): 62-66 e-ISSN: 2279-0837, p-ISSN: 2279-0845. www.iosrjournals.org (accessed October 25, 2015).

Abdullahi once described AGM as "social event or an empty ritual" because it does not reflect the true participation of members.[50] It is, therefore, necessary to have active participation of members at AGM in order to serve as a counterbalance mechanism where their interest is protected.[51] There is need to study the current law in order to improve member's right of participation in the AGM.

1.2 Problem Statement

In Nigeria, there are statutory provisions, code of corporate governance and other rules that recognised member's right to participate at AGM. Member's participation mainly depends on receiving adequate notice of date, time, place/venue and business to be transacted during AGM.[52] They cannot attend meeting without having prior notice.[53] The essence of giving notice is to enable those entitled to attend the meeting an opportunity to scrutinise and planned for the meeting, based on the premise that they must be involved in running the activities of the company.[54] However, even with the legal provisions, member's participation is low. This is mainly inability of the company to serve them notice of AGM on time. In view of that, this study set to address three main problems affecting member's participation in the AGM in Nigeria as follows:

[50] Ahmed Abdullahi, "The Company in a Changing Environment," *Gravitas Review of Business and Property Law* 3 no. 13 (January, 1990): 21 at 222 (as cited in) Bayo Atte, "Enhancing Shareholders Participation in Company Meetings in Nigeria through Application of Information Technology," *Journal of Humanities and Social Science (IOSR-JHSS)* 20 no. 9 Ver. VI IOSR (Sep. 2015): 62-66 e-ISSN: 2279-0837, p-ISSN: 2279-0845. www.iosrjournals.org (accessed October 25, 2015).
[51] R2 (Lecturer), interviewed by researcher, FCT Abuja, Nigeria, October 27, 2016; Hannigan Brenada, *Company Law*, 3rd ed. (United Kingdom: Oxford University Press, 2012), 326.
[52] *(2003) 2 HRLRD 915 at 923F Re Green Valley Investment Ltd.*
[53] See also Bayo, fn. 49.
[54] See also Bayo, fn. 49.

The first problem relates to delay in receiving notice of AGM. In most cases, members receive notice few days to AGM and in certain cases, after the AGM has been held. This is mainly due to poor postal services in Nigeria, where mails take some months to reach their destinations.[55] The CAMA 1990 presumed that notices sent by post are deemed delivered after one week from the date it was posted to a member concerned.[56] This prevents members from attending and exercising their voting rights to determine crucial issues affecting the company.[57] This problem persists even with the fact that sections 227 & 228 of the CAMA 1990 recognised members right to receive notice of AGM as well as right to attend meetings. Furthermore, section 220 of the CAMA 1990 prescribes the procedure for service of notice, which is either personally or by post to the registered address of members at least twenty one days prior to the date of the meeting, which is the responsibility of the company secretary.[58] Additionally, section 222 CAMA 1990 requires public companies to advertise notice of meetings in at least two national dailies. In this regard, Olusegun argued that publication of notice in two national dailies is not enough considering the dispersed nature of members.[59] Despite the above provisions, members hardly received notice of AGM on time.

Another issue linked with the notice of meeting is lack of detailed provision relating to place of AGM under section 218 (1) CAMA. The section is silent about the

[55] R2 (Lecturer), interviewed by researcher, FCT Abuja, Nigeria, October 27, 2016; R3 (Lecturer), interviewed by researcher, Kano, Nigeria, October 26, 2016; R13 (Company Director), interviewed by researcher, Kano, Nigeria, December 9, 2016.
[56] Amao O. & Amaeshi, K. "Galvanising Shareholder Activism: A Prerequisite for Effective Corporate Governance and Accountability in Nigeria," *Journal of Business Ethics* 82 no. 1 (2008):119-130.
[57] See also Bayo, fn. 49.
[58] Ubon, Aniebiet-Abasi Daniel and Abidoye Innocent, "The Role and Status of a Company Secretary in Modern Corporate Governance in Nigeria; a Case of 'a Mere Errand Boy," (2015). http://dx.doi.org/10.2139/ssrn.2695678
[59] Oluwasegun Isaac Aderibigbe, "The Mechanisms of Corporate Meetings under the Companies and Allied Matters Act (CAMA) 1990," *International Journal of Advanced Legal Studies and Governance* 2, no.1 (2011):184.

responsibility to fix the place of AGM. It is at the discretion of management to decide what is convenient.[60] Section 216 CAMA 1990 only provides that AGMs shall be held in Nigeria, without any further details. This allows management the latitude to choose place of meeting according to what suit their interest and therefore prevents members from participating at AGMs,[61] due to geographical location. The above constraint persists despite the requirement under principle 23 of Code of Corporate Governance for Public Companies in Nigeria 2011 (CCGPCN 2011). Rule 23 tasks the board of directors to fix place/venue of AGM that is easily accessible to members so as not to deprive them the right to attend the meeting. The constraint may be linked with the fact that CCGPCN 2011 has no legal enforceability.

The second problem to be addressed relates to inadequate remedies available to members whose rights were violated. Although, section 221(1) of CAMA 1990 provides that failure to serve notice of AGM on person entitled to attend may invalidate the meeting, except where it was due to "accidental omission" on the part of the company or where members waived their right to receive notice. The term accidental omission was not defined under CAMA 1990. Hence it appears to be defensive on the part of the management. This is because, section 221(2) of the CAMA 1990 only exempts "misinterpretation or misrepresentation" of the provisions of CAMA 1990 or those provisions contained in the article of association as not falling under accidental omission. Intentional omission to serve notice of meeting would make the company liable for the default.[62] In the same regard, Section 218(5) CAMA 1990 provides that

[60] R1 (Lecturer), interviewed by researcher, Jos, Nigeria, November 6, 2016.
[61] R10 (Company Secretary), interviewed by researcher, Kano, Nigeria, October 24, 2016; Nwoye Ifeanti Daniel, "Corporate Governance in Nigeria: Legal and Regulatory Regime Simplified," (Sep. 2015). http://thenigerialawyer.com/corporate-governance-in-nigeria-legal-and-regulatory-regime-simplified/ (accessed April 16, 2016).
[62] Ojimaduekwu Ogechukwu Ajoku, "Corporate Democracy and the realities of Company Meetings" https://www.academia.edu/4919578/ (accessed June 21, 2016).

the court shall not invalidate any proceeding at company's meeting due to any irregularity or defect in the notice of meeting or relating to date, time, place or nature of business to be transacted at the meeting except where the officer responsible for such defect acted in bad faith or without due diligence. This exception is similar to validation procedural irregularity under section 582(1) CA 2016.

Section 213(5) CAMA 1990 further imposed a fine of ₦500.00 on the management for default in holding AGM. The penalty is too insignificant, inconsequential as a fine[63] and, would encourage the management to violate member's right.[64] Section 215(6) CAMA 1990 only provides remedy to members that requisitioned EOGM. There is no equivalent provision under CAMA 1990 in respect of AGM. The main remedy available to members is such that empower members to go to court in order to invalidate the meeting held without serving notice to them; an order of injunction or declaration.[65] Additionally, members find it difficult institute action in court due to *locus standi* (which generally recognised the company itself as the proper party not the members).[66] Even though, member's personal right can be enforced by individual members nevertheless, enforcement of member's remedies in Nigeria is still very low.[67]

[63] R4 (Lecturer), interviewed by researcher, Zaria, Kaduna, Nigeria, November 24, 2016; R5 (Lecturer), interviewed by researcher, Kano, Nigeria, October 25, 2016.
[64] R11 (Company Secretary), interviewed by researcher, FCT Abuja, Nigeria, November 13, 2016.
[65] Olagoke Kuye, "Publication and Dissemination of Annual Reports to Shareholders in Nigeria and the United Kingdom: The Economics of Social Media and Electronic Communication," *IALS Student Law Review* 2, Issue 2 Spring (2015):43. http://journals.sas.ac.uk/lawreview/article/viewFile/2177/210 (accessed May 12, 2016).
[66] *Daily Times of Nigeria & Ors v. D.S.V Limited (2013) LPELR-20369 C.A.*
[67] R1 (Lecturer), interviewed by researcher, Jos, Nigeria, November 6, 2016; Kunle Aina, "Strategies for Enforcing Shareholder Rights in Corporate Governance in Nigeria." https://www.academia.edu/7583449 (accessed April 12, 2016).

The third problem relates to lack of legal provision under CAMA 1990 to accommodate the use of information and communication technology (ICT) in convening AGM. While recent advancement through ICT in corporate communication is developing in many countries, the CAMA 1990 has no provision to accommodate service of notice of meetings through electronic medium. This equally adds to many constraints faced by members in attending AGM, since no legal backing to serve members through electronic means.[68] In Malaysia for example, section 319 CA 2016 recognised electronic service of notice of meeting. There are still uncertainties on how to ascertain when a notice of meeting is deemed delivered using electronic medium.[69] Similarly, the law is not clear as to what would constitute the actual venue for e-meetings, because it takes place without a physical venue. In response to above, this study set to examine various laws, cases, rules, regulations, codes of corporate governance and opinion of experts on improving member's participation in the AGM in Nigeria particularly through notice and remedies thereto.

1.3 Research Questions

Based on the problems identified above, this study formulates the following research questions:

1. To what extent the laws in Nigeria can improve member's participation in the AGM through proper service of notice of AGM?

[68] R4 (Lecturer), interviewed by researcher, Zaria, Kaduna, Nigeria, November 24, 2016; R2 (Lecturer), interviewed by researcher, FCT Abuja, Nigeria, October 27, 2016.
[69] Hasani Mohd Ali, Zinatul A. Zainol, Jady Zaidi Hassim, and Nor Hayati Abdul Samat, "Some Legal Uncertainties in Electronic Corporate Meetings," *International Journal of Computer Theory and Engineering* 5, No. 2 (April 2013). DOI: 10.7763/IJCTE.2013.V5.694.

2. What are the remedies available to members who are unable to participate at the AGM due to non service of notice of AGM under Nigerian company law?
3. How can the application of ICT improve member's participation in the AGM under Nigerian company law?

1.4 Research Objectives

From the above research questions, this study generally examined various legal issues regarding member's participation in the AGM in Nigeria while specifically focusing on the following objectives:

1. To analyse legal provisions relating to notice of AGM under Nigerian company law
2. To examine remedies available to members of a company under Nigerian company law in the event of failure to receive notice of AGM,
3. To examine the application of ICT in enhancing member's participation in the AGM under Nigerian company law

1.5 Significance of the Study

The AGM is regarded as an indispensable aspect of corporate governance[70] and without member's participation, the essence of corporate governance would be defeated.[71] This study was necessitated based on the fact that corporate meeting has been an area of corporate law in Nigeria with few literature. The study hopes to fill in the gap by consolidating literature in AGM. It is expected to serve as a comprehensive guide on how to enhance the concept of corporate governance (from member's

[70] Nicholas Apostolides, "Exercising Corporate Governance at the Annual General Meeting", Corporate Governance: *The International Journal of Business in Society*, 10 (2) (2010) 140 – 149. http://dx.doi.org/10.1108/14720701011035666 (accessed January 12, 2016).
[71] *Ibid.*

perspective) in Nigeria. The study would benefit many parties. These are government; management of companies; members/shareholders; and academics. Government would benefit from outcome of the study through improving corporate legislation in Nigeria as well as improving other regulatory functions of certain bodies. Companies would benefit in terms of improving good governance that would ensure active participation of members at corporate meetings through amendment of article of association. Similarly, the outcome of this study would help members/shareholders of a company to know their legal rights and remedies relating to participation at the meeting and how to enforce them. Finally, the academics would benefit from various literature consolidated and would serve as a reference point in future studies.

This study examined the possibility of incorporating ICT under Nigerian company law. In this regard, Nigeria is committed to ensuring that ICT facilities are widely available and accessible to users,[72] by encouraging competition among service providers.[73] In 2016, the Report of the Nigerian Telecommunication Services Sector indicates the total number of Global System for Mobile Communications (GSM) subscribers as at March 2016 was 147,398,854, which represents an increase of 5,756,018, or 4.06%.[74] This shows that internet access and coverage in Nigeria is expanding.

[72] "New Media and Development." http://www.columbia.edu/itc/sipa/nelson/newmediadev/Nigeria.html (accessed June 21, 2016).
[73] Fola Udufuwa, "Understanding What is Happening in ICT in Nigeria, Evidence for ICT Policy Action," Policy Paper6(2012)http://www.researchictafrica.net/ (accessed June 22, 2016).
[74] Nigerian Telecommunications (Services) Sector Report, (2016) by the National Bureau of Statistics. Also available online at www.nigerianstat.gov.ng/ (accessed May 20, 2017)

In another word, development in ICT would extent to companies in their business dealings.[75] There is the hope that application of ICT under Nigerian company law would impact on service of notice as well as participation of members in the AGM.

1.6 Research Methodology

1.6.1 Research Design

The research design carries the detail process taken in research. This study adopts doctrinal, comparative and qualitative methods. The doctrinal aspect in this study is essentially library based, since appropriate data were obtained in the library, databases, and other archives. This methodology aims to study and analyse fact, legal provisions, institutions and principles in a systematic way,[76] in order to expand the scope of certain legal principles.[77] In other word, doctrinal research analyses statutory provisions, case law and legal history with a view to formulating positive criticism and propose consistent result.[78]

The comparative aspect emphasised on comparing two or more legal provisions with a view to see the strength and weakness(es) of one another so as to give room for reform.[79] In this study, comparative references were made between relevant provisions

[75] "Information Communications Technology for Development" http://live.worldbank.org/information-communications-technology-development (accessed June 21, 2016).
[76] Anwarul Yaqin, *Legal Research and Writing* (Malaysia: LexisNexis, 2007).
[77] Jan M. Smits, "Law and Interdisciplinary: On the Inevitable Normativity of Legal Studies, Critical Analysis of Law," *Maastricht European Private Law Institute Working Paper 2014/101:1* (2014):75-86.
[78] R. A Posner, "Legal Scholarship Today," *Harvard Law Review* 115 (n.d.) 1314-1316 (as cited in) Rob Van Gestel and Hans Wolfgang Micklitz, "Why Methods matter in European Legal Scholarships," *European Law Journal* 20 no. 3 (May 2014):292-316 at 292.
[79] Anwarul Yaqin, *Legal Research and Writing* (Malaysia: LexisNexis, 2007).

of the CAMA 1990 and the CA 2016 aside other rules, regulations and code of corporate governance.

The qualitative research[80] aspect concerns interview. The choice of qualitative research in this study is based on the nature of problem to be addressed since it relates to an area (member's participation in the AGM in Nigeria) where little has been conducted to find out how notice of meeting would improve members participation in the AGM. Qualitative research is basically exploratory in nature.[81] The use of interviews in legal research is important as it gives practical experience or information on certain legal matters or provisions.[82] In this study, it is important in the sense that the study benefitted from experienced academics, company directors, secretaries, regulators and executives of shareholder associations to make recommendations based on legal and practical experience(s) obtained.

1.6.2 Research Scope

It is a comparative study between company law of Nigeria and Malaysia. The study on one aspect focused on relevant provisions of CAMA 1990 relating right to receive notice of AGM; remedies; and, the application of ICT in AGM. The focus is on the right of individual members of a public company to receive notice of AGM in Nigeria. Institutional members are therefore outside the scope of this study. The CAMA 1990 is the major legislation governing companies in Nigeria. Similarly, various decided

[80] Steven J. Taylor, Robert Bogdan and Marjorie De Vault, *Introduction to Qualitative Research Methods: A Guidebook and Resource* (Syracuse University, New York, USA: 2015), 8.
[81] John W. Creswell, "*Research Design: Qualitative, Quantitative and Mixed Methods Approache*s," 2nd ed. (USA: Sage Publishing, 2003), 23.
[82] Charles Chatterjee, "*Methods of Research in Law*," 2nd ed. (London: Old Bailey Press, 2000), 29.

cases relevant to this study were examined. These decisions are generally those related to company meetings and specifically to AGM. There is no specific year within which reference to decided cases was made. However, emphasis was given to relevant decided cases. Other Nigerian code and rules examined are: CCGPCN 2011, Companies Regulation 2012 (CR 2012), Securities and Exchange Commission Rules and Regulation 2013 (SECRR 2013), Rules and Regulations of the Nigerian Stock Exchange 2015 (RRNSE 2015) among others.

On the one hand, in Malaysia, references were made to the Companies Act 2016 (CA 2016) and the Malaysia Code on Corporate Governance 2017 (MCCG 2017) among others. The choice of Malaysia was due to the fact that CAMA 1990 is modeled based on the United Kingdom Companies Act 1948[83] and the fact that Nigeria applies Common law principles.[84] On the one hand, the CA 2016 was very recent and has incorporated provisions on the application of ICT and has recent provisions on member's remedies. Moreover, Nigeria and Malaysia are both Commonwealth countries having some similarities regarding principle and application of their respective laws. As a result, this study would serve as a proposal for reform of the CAMA 1990.

In this study, seventeen respondents were interviewed in Nigeria. Five from the academics with expertise in company law, three shareholder activists, three secretaries

[83]Guobadia, A., "Protecting Minority and Public Interests in Nigeria Company Law: The Corporate Affairs Commission as a Corporations Ombudsman (2000): in F. McMillan (ed.), *International Company Law Annual*, 1 (Oxford-Portland, OR: Hart Publishing): 81.
[84]Amaeshi, Kenneth M.; Adi, A.B. C.; Ogbechie, Chris and Amao, Olufemi O., "Corporate Social Responsibility in Nigeria: Western Mimicry or Indigenous Influences?" (2006). http://dx.doi.org/10.2139/ssrn.896500

of public companies, three company directors and three regulators. The five respondents from the academics were interviewed on their perception about how the law regulates serving notice of AGM and whether the remedies available to members under the law are adequate. Similarly, the respondents were asked on the application of ICT in corporate meetings. The five academics were chosen from various law faculties of University of Jos, Bayero University, Kano and Ahmadu Bello University, Zaria respectively. This enables the researcher to have broader understanding and experience of the law in question as well as in-depth analysis of their response. Their response equally helped the researcher to answer the research questions and objectives. This is based on the fact that most of the academics also engaged in private legal practice and therefore acquainted with both theory and practical experience.

The three company secretaries, on the other hand, were interviewed on how they serve notices of AGM in practice. They were chosen from public companies across northern and southern Nigeria. This is because it is the duty of company secretaries to serve notice of company meetings. This enabled the researcher to appreciate the practical procedure followed and how it has affect member's participation in the AGM. Similarly, the response from the secretaries helped the researcher in analysing how the application of ICT to serve notice of meeting. The three company directors were equally chosen from public companies in Nigeria. The choice of company directors in this study was to derive their experience on how management influence service of notice. The three regulators were interviewed on how the law regulates notice of AGM. They were chosen from the CAC and SEC respectively. On the one hand, the three shareholder activists were interviewed based on their practical experience as shareholders as well as representatives of the shareholders. Their responses were heard

on member's constraint regarding notice of meeting as well as remedies available to members. They were chosen from Independent Shareholders Association of Nigeria (ISAN) and Association for the Advancement of the Rights of Nigerian Shareholders (AARNS).

1. 6.3 Types of Data

Primary and secondary data were used in this study. The primary data used in this study was divided into two. First, concerns all legal provisions and case law relating to company meetings in Nigeria and Malaysia. The second concerns interview which also formed part of primary data in this study. The secondary data includes journals, articles, textbooks, government reports and online database. The secondary data was collected from the library of Universiti Utara Malaysia, Universiti Kebangsaan Malaysia, Bauchi State University Gadau, Nigeria, Federal High Court of Nigeria, Abuja and other online data bases such as Lexis Nexis, Hein Online, Jstor Art and Science, West Law, Cambridge Law Journal among others.

1. 6.4 Data Collection Methods

The study adopts both primary and secondary data. The primary was sourced mainly from the following libraries: Universiti Utara Malaysia (UUM); Universiti Kebangsan Malaysia (UKM); Bauchi State University, Gadau- Nigeria (BASUG); The library of the Federal High Court of Nigeria; Law Pavilion database (an online data base containing various decisions of Nigerian courts); and from interviews with respondents.

Interview as one of the means of collecting data in this study was based on the fact that it is one of the most relevant forms of collecting data in qualitative research.[85] It aims to contribute to existing knowledge based on understanding or perception of the interviewee on particular phenomena.[86] There are various classifications of interviews (depending on the research area and research questions formulated). These are structured; semi-structured; and unstructured interviews.[87] The interviewer in an unstructured interview gets to the interview without written and specific questions to ask the interviewee. In a semi-structured interview, the interviewer has some written questions in a general way and other questions may emerge in the course of the interview. This study used semi-structured interview, face to face, which gave the researcher an opportunity to gain experience from the relevant respondents.

There is no requirement on exact number of respondents required in an interview. The number depends on the nature of the study, its objectives, time frame and sometimes availability of funds.[88] According to Crouch and McKenzie[89] less than 20 respondents would be enough and give the researcher deeper understanding of the subject of study. In this study, 17 respondents were interviewed in Nigeria between October to December 2016. All the 17 respondents were interviewed face to face at various locations across different states in Nigeria. The interview lasted between 20mins to

[85] Sandy Q. Qu John Dumay, "The Qualitative Research Interview, Qualitative Research in Accounting & Management," 8 (3) (2011): 238-264. http://dx.doi.org/10.1108/11766091111162070

[86] Barbara DiCicco-Bloom and Benjamin F Crabtree, "Making Sense of Qualitative Research: The Qualitative Research Interview," *Medical Education* (2006): 40: 314–321. doi:10.1111/j.1365-2929.2006.02418.x

[87] See also Sandy, fn. 85.

[88] Baker S.E., R. Edwards and M., Doidge, How Many Qualitative Interviews is Enough? Expert Voices and early Career Reflections on Sampling and Cases in Qualitative Research (2012).

[89] Crouch M., and McKenzie, H., *The Logic of Small Samples in Interview-Based Qualitative Research* (Sage, 2006).

1hour 30mins. The researcher uses a mobile phone and notebook to record the audio while taking note of important discussion.[90] This aids the researcher in transcribing data. The techniques adopted by the researcher includes conducting the interview in a convenient place with less distractions; outlining the purpose of the interview; assuring the respondent of confidentiality; stating the structure of the interview; time frame; procedure for follow-up; giving room for clarification; and recording the interview session.[91] All the 17 respondents were coded and described as (R1-R17) to ensure confidentiality and therefore (R) would be used to mean respondent in the analysis part. The table below shows the background of the respondents.

Table 1.2

Background of the Respondents

S/no.	Code	Institution	Nature of Activity	Position	Discipline
1	R1	University	Lecturing/Research	Professor of Law	Law
2	R2	University	Lecturing/Research	Senior Lecturer	Law
3	R3	University	Lecturing/Research	Lecturer	Law
4	R4	University	Lecturing/Research	Senior Lecturer	Law
5	R5	University	Lecturing/Research	Senior Lecturer	Law
6	R6	Shareholder Association	Protection of members	Shareholder Activist	Education
7	R7	Shareholder Association	Protection of members	Shareholder Activist	Accounting
8	R8	Shareholder Association	Protection of members	Shareholder Activist	Accounting

[90] Henderson, H., "Difficult Questions of Difficult Questions: The Role of the Researcher and Transcription Styles. *International Journal of Qualitative Studies in Education*," *31* vol. 2 (2018) 143-157. doi/abs/10.1080/09518398.2017.137961

[91] Campbell Ann, Olwen Mc Namara and Peter Gilroy, *Practitioner Research and Professional Development in Education* (Sage, 2003).

9	R9	Public Company	Building Construction	Company Sectary	Law
10	R10	Public Company	Mortgage Banking	Company Sectary	Law
11	R11	Public Company	Banking	Company Sectary	Law
12	R12	Public Company	Production	Director	Accounting
13	R13	Public Company	Mortgage Banking	Director	Accounting
14	R14	Public Company	Oil/Gas Distribution	Director	Law
15	R15	Regulator	Monitoring/Enforcement	State Head	Law
16	R16	Regulator	Monitoring/Enforcement	Compliance Officer	Public Administration
17	R17	Regulator	Monitoring/Enforcement	Head, Compliance Unit	Accounting

The above table showed a total of seventeen respondents with their institutions, nature of activities carried by the institution, positions and discipline. The respondents from public companies were engaged in various businesses ranging from construction, mortgage banking, oil and gas, production and banking business. This enable the researcher to hear diverse experience from the respondents as relates to member's participation in the AGM.

1.6.5 Analysis of Data

Data analysis is a systematic process engaged by a researcher in order to find meaning, with the aim of communicating the meaning to interested persons or targeted beneficiaries. It involves organising and interrogating data in a manner that enables researcher to see particular pattern, themes or to discover relationship and to make

interpretations, criticism or to develop theories.[92] In this study, various methods of data analysis were used. This study uses doctrinal, comparative and content/thematic analysis in analysing relevant data.

Doctrinal analysis focuses on legal provisions, institutions and principles in a systematic way,[93] in order to expand the scope of certain legal principles.[94] In other word, doctrinal research analyses statutory provisions, case law and legal history with a view to formulating positive criticism and propose consistent result.[95]

Comparative analysis on the one hand involved comparing two or more legal provisions in certain jurisdictions to see their similarities and differences to improve the efficacy of legal provision in a jurisdiction whose laws are less effective in that regard.[96] In this study, references were made to relevant provisions of the company law of Malaysia with a view to see area(s) of improvement in Nigerian laws. In this study, a comparative analysis was used in analysing both primary and secondary data (excluding the interview) since the interview would be limited to Nigerian respondents.

Content analysis mainly gives general overview of the study and supporting relevant fact with evidence. This approach emphasizes on the negative aspect of legal

[92] Hatch, J. A. "*Doing Qualitative Research in Education Settings,"* (Albany: Suny Press: 2002) as referred in "Qualitative Research Introduction Center for Teaching," Research & Learning, Research Support Group at the Social Science Research Lab, American University, Washington, D.C. http://www.american.edu/provost/ctrl/researchsupportgroup.cfm202-885- 3862 (accessed 22/3/2016).
[93] Anwarul Yaqin, *Legal Research and Writing* (Malaysia: LexisNexis, 2007).
[94] Jan M. Smits, "Law and Interdisciplinary: On the Inevitable Normativity of Legal Studies, Critical Analysis of Law," *Maastricht European Private Law Institute Working Paper 2014/101:1* (2014):75-86.
[95] R. A Posner, "Legal Scholarship Today," *Harvard Law Review* 115 (n.d.) 1314-1316 (as cited in) Rob Van Gestel and Hans Wolfgang Micklitz, "Why Methods Matter in European Legal Scholarships," *European Law Journal* 20 no. 3 (May 2014):292-316 at 292.
[96] Anwarul, fn. 93.

provisions with a view to examine them and suggest answers based on evidence.[97] Content analysis in this study was used to analyse part of the primary data in the respective chapters. Thematic analysis on the other hand, enables a researcher to analyse data comprehensively by comparing two or more set evidence obtained from the respondents in order to understand the relationship between two or more variables in a study.[98] It analyse data in a systematic way and gives a better understanding of phenomena with accuracy. Therefore, it is most appropriate for analysing qualitative data. The use of thematic analysis in this study was justified having regard to its usage in interpreting data, deductive and inductive approaches. Furthermore, the model used in thematic analysis appears to help in obtaining a good outcome. These include data reduction, data display, and data conclusion.[99] In this study, thematic analysis was used to analyse data from the interview which formed part of the primary data. Accordingly, the choice of one method over the other was prompted based on three main elements, namely: the nature of research problem(s) to be addressed, personal experience of the researcher and the targeted beneficiaries of the study.[100]

1.7 Limitation(s) of the Study

In this study, the researcher had encountered some limitations that include lack of adequate literature written by Nigerian authors in the field of study as well as decided cases. This is mainly because section 251 of the 1999 Constitution of the Federal

[97] Clive Seale, Giampietro Gobo, Jaber F. Gubrium and David Silverman (ed.), *Qualitative Research Practice*, Paperback ed., (London: Sage Publications, 2007), 10.
[98] Alhojailan, Mohammed Ibrahim, "Thematic Analysis: A Critical Review of its Process and Evaluation," *West East Journal of Social Sciences* 1 no.1 The West East Institute 39 (Dec. 2012). http://fac.ksu.edu.sa/sites/default/files/ta_thematic_analysis_(*accessed 22/3/2016).*
[99] Miles, M.B. and Huberman, A.M., *Qualitative Data Analysis: An Expanded Sourcebook* (Sage Publications 1994); Green J., and Thorogood N. *Qualitative Methods for Health Research* (Sage Publications, London: 2018).
[100] John, fn. 81.

Republic of Nigeria, (as amended) empowers the Federal High Court of Nigeria (FHCN) with exclusive jurisdiction to entertain cases relating to the administration of CAMA 1990 and decision of the court are mostly reported in hardcopy. Lack of cooperation from the respondents mainly due to confidentiality of the interview. Another limitation is the fact that the respondents interviewed were all from Nigeria. Finally, scarcity of resources was a limitation to this study.

In order to remedy the said limitations, the researcher compliments the scarce literature written by Nigerian authors with those written in other jurisdictions. Similarly, the researcher also obtained a hardcopy of decided cases from the registry of the FHCN. Regarding time constraint, the researcher had to work sometimes day and night to see that the study is completed within the specified period of three years study leave. Appointment and meeting with the respondents to conduct the interview was among the most tedious task throughout the course of collecting data. Some of the respondents took more than two months to book an appointment with them. However, the researcher is grateful that he has finally met and interviewed seventeen respondents. The limitation concerning interview with respondents from Nigeria was complemented by recourse to company laws of Malaysia because it appears based on comparative study that Nigerian company law is weaker than that of Malaysia. This takes away the necessity of interviewing respondents from Malaysia. Finally, financial constraint was complimented through the help of family members to see that this study becomes a reality.

1.8 Literature Review

In this part, review of some literature on general overview of the study would be presented. Specific literature review would go in line with relevant chapters in this study.

1.8.1 Operational Terminologies

In this part, attempt would be made to define some terminologies to be used in this study. The definition is based on statutory provisions mainly in the CAMA 1990 except in few instances where reference to CA 2016 was made. Others include decided cases, legal dictionaries, definition by authors and definition of terms by the researcher within the context of this study. According to the CAMA 1990, [101] 'member' has been defined as:

> Any person not below the age of eighteen (18) years and of sound mind who subscribes to the memorandum of a company and having agreed to become member of a company, on its registration shall be entered as member in its register of members and every other person who agrees in writing to become a member of a company, and whose name is entered in its register of members, shall be a member of the company. In case of a company having a share capital; each member shall be a shareholder of the company and shall hold at least one share. This includes the heir, executor, administrator or other personal representative, as the case may be, of the member.

According to Byran,[102] "member is a person that has right of participation in a given organisation including the right to make, debate and vote subject to the limit set out by the organisation." This includes a 'full voting member' as opposed to 'non-voting

[101] s. 79; 80; 567 CAMA 1990.
[102] Bryan A. Garner, *Black's Law Dictionary,* 8th ed. (United States of America: Thomson West, 2007), 1005.

member,' while Hornby[103] defined member as "a person that belongs to a particular group." In this study, a member means a shareholder whose name is registered in company's register of members and who held a number of shares in a company, having the right to vote during company's meeting. A member in this study only concern natural person (individual) and does not include institutional member(s).

'Shares' means an equity or ownership of interest in a corporation or joint stock company, while 'Shareholder' means any person who owns shares in a company,[104] even though mere allotment of shares does not necessarily make someone a shareholder.[105] In this study, member means any person that has shares in a public company irrespective of how he acquired them and having right to attend and vote at company's meeting.

The CAMA 1990 has not defined 'notice of meeting,' likewise. However, the Nigerian Court of Appeal in the case of *Ononye & Ors v. Chukwuma*[106] defined notice to mean "knowledge or cognizance." In other words, to give notice simply means "to bring matters to a person's knowledge or attention." According to Bryan,[107] 'notice' means legal notification required by law or agreement, or imparted by operation of law as a result of some facts, definite legal cognizance, actual or constructive of an existing right" while Hornby[108] viewed 'notice' as a sheet of paper that contains written or printed information, that is mostly put in a public place or advertise in a newspaper."

[103] Hornby, A.S., *Oxford Advanced Learner's Dictionary of Current English,* 18th ed. (United Kingdom: Oxford University Press, 2010), 959.
[104] See also Bryan, fn. 102 at 1408.
[105] *Oilfield Supply Centre Ltd. v. Joseph Lloyd Johnson (1987) LPELR-2365 S.C.*
[106] *(2005) LPELR-7526 C.A.*
[107] See also Bryan, fn.102, 1090.
[108] See also Hornby, fn. 103, 1042.

In this study, notice means putting members informed about a scheduled AGM. There is no definition of 'e-notice' under both CAMA 1990 and CA 2016. However, e-notice is said to mean a written statement intended to pass information to another through electronic means.[109] In this study, e-notice means an electronic statement passed to members informing them about scheduled AGM of the company.

'Meeting' is not defined under CAMA 1990 however, in the English case of *Sharp v. Dawes*,[110] "Meeting means coming together of two or more persons with the aim of discussing and acting upon some matter(s) in which they have a common interest. In other words, it is the gathering of people to discuss or act on matters in which they have a common interest, especially to transact business."[111] Meeting equally represents a gathering of two or more people to discuss and address some issues.[112] In this study, meeting means coming together of members of a company and the management to transact business relating to the company during AGM.

There is no definition of 'e-meeting' under CAMA 1990 or under CA 2006. However, by dictionary meaning, 'e-meeting' simply means the act of conducting any act or activity using electronic medium without face to face interaction.[113]In this study, e-meetings mean the act of conducting AGM using electronic means.

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[109] Sean Dowling, "The 'e-Notice': An Emerging Genre," (2009). https://web4learning.files.wordpress.com/2009/11/e notice.pdf (accessed June 20, 2016).
[110] *Sharp v. Dawes (1876) 2 QBD 26.*
[111] See also Bryan, fn. 102 at 1004.
[112] Augie JCA in the case of *Guaranty Trust Bank Plc. & Anor v. Udoka Anyanwu (2011) LPELR-4220 C.A* where the court adopt a dictionary meaning by Hornby, fn. 103 at 957.
[113] "The Law Dictionary: Featuring Black's Law Dictionary Free Online Legal Dictionary," 2nd ed. (n.d) http://thelawdictionary.org/electronic-meeting-system-ems/ (accessed June 20, 2016).

The CAMA 1990 is silent as to the meaning of AGM. However, the CA 2016 mentioned that 'AGM' means "a meeting of the company required to be held by section 340."[114] This definition is also not clear. However, Bryan defines annual meeting as a yearly meeting where members come together to vote for or to install officers or directors and to conduct other routine business activities.[115] In this study, AGM means the general meeting of a company where members come together to discuss the fate of the company and pass resolution through exercising their voting powers.

'Participation' means "the act of taking part in something,"[116] or to get involved in an event."[117] In this study, participation means members attendance and voting at the AGM. There is no definition of 'venue of meeting' under CAMA 1990. However, Bryan[118] defines venue to mean "a place where people meet for an organised event." In this study, it means location/place chosen for the purpose of holding AGM.

The Nigerian Court of Appeal in the case of *New Resources Int'l Ltd. & Anor v. Oranusi*[119] defines 'resolution' as a mean where company speaks or expresses its opinion, through the voting process. In other words, resolution means formal action taken by a company's board of directors or other body of a company authorising a particular act, transaction or appointment. Shareholder's resolution means a kind of resolution passed by members which is usually to ratify the act of directors or to

[114] s. 2 CA 2016.
[115] See also Bryan, fn. 102 at 1004.
[116] *Ibid*. 1151.
[117] See also Hornby, fn. 103, 1107.
[118] See also Bryan, fn. 102.
[119] *(2010) LPELR-4592 C.A.*

reject.[120] In this study, resolution means decision taken by members or directors during meetings. On the one hand, simple majority means a "majority of the members who vote; a quorum being present, disregarding absent members who are present but do not vote, blanks and abstentions."[121] In this study, simple majority means majority of vote cast by members during AGM; not below 51% of the total vote caste.

Article of association means "a certificate filed, in conformity with law by persons who desire to become a corporation and setting forth the rules and conditions upon which the association or corporation is founded."[122] It signifies a binding contract between members of a company.[123] In this study, article of association means an incorporation document governing internal affairs of a company. "Memorandum of association" means "a legal document setting up a company. It may be with limited or unlimited liability and includes the company's name, objective and duration.[124] In this study, memorandum of association means an incorporation document forming part of company's constitution.

'Proxy' means an agent and the instrument appointing him to act on behalf of a member.[125] 'Corporate governance' means "general control and accountability of corporate executives rather than issues of day to day management."[126] In this study, corporate governance means a process where board of directors managed a company

[120] See also Bryan, fn. 102 at 1337.
[121] *Ibid.* at 975.
[122] V. R. Manohar, *Concise Law Dictionary,* Repr. (New Delhi, India: Wadhwa and Company Law Publishers, 2005), 76.
[123] *AG Lagos state v. Eko Hotels Ltd (2001) FWLR (Pt 82) 1996.*
[124] See also Bryan, fn. 102 at 1006.
[125] Paul L. Davies and Sarah Worthington, *Gower and Davies Principle of Modern Company Law*, 19th ed. (United Kingdom: Sweet & Maxwell, 2012), 481.
[126] Paddy Ireland, "Company Law and the Myth of Shareholder Ownership," *Modern Law Review* 62, 1 (1999):32–57. DOI: 10.1111/1468-2230.00190 (accessed April 13, 2016).

with transparency for the benefit of members and the larger society. There is definition of the term 'Remedy' under the CAMA 1990. However, according to the Black's Law Dictionary, remedy means preventing, redressing or compensating violation of right. In this study, remedy referred to the redress given to members wherever their right is infringed upon.

1.8.2 Notice of AGM

In this part, brief overview of company meeting would be provided and then review of few literature on notice of AGM. The CAMA 1990 recognised three classes of meetings, namely statutory meeting,[127] AGM[128] and extraordinary general meetings.[129] The CAMA 1990 equally recognised right of members to attend and participate at meeting.[130] This provision made it mandatory on a company to give members the opportunity to attend and vote at meeting except where a member has outstanding liabilities which he could not settle after the company has asked him. In this regard, Mortimer[131] pointed out that, law and the SEC recognise the right of members to attend and vote at AGM as one of the regulatory bodies should ensure that member's voting right is improved.

Corporate meeting is said to be an important aspect of corporate governance. To this end, Therese[132] in a study argued that, AGM play a significant role in giving members

[127] s. 211 CAMA 1990.
[128] s. 213 CAMA 1990 similar to s. 340 CA 2016.
[129] s. 215 CAMA 1990
[130] s. 81 &227 CAMA 1990.
[131] Mortimer M. Caplin, "Proxies, Annual Meetings and Corporate Democracy: The Lawyer's Role," *Virginia Law Review* 37, 5 (June 1951): 653-697. http://www.jstor.org/stable/1069438 (accessed: November 29, 2015).
[132] Therese Strand, "*The Owners and the Power: Insights from Annual General Meetings,"* PhD Thesis, (Center for Corporate Governance Copenhagen Business School: 2012). Online ISBN: 978-87-92842-77-0

an opportunity to subject management to account for their actions, while Oluwasegun[133] explained that members and the board derived their authority from the company's article of association. The board has control over the conduct of AGM, including voting process. This calls for the involvement of members at AGM to reconcile and check the powers of the board. Otherwise the management would have unrestricted powers to the detriment of members.[134] In this regard, principle 2 of the CCGPCN 2011 tasks the board to protect the overall interest of members and to ensure that they are given the chance to participate in the company. David and Yuanzhi[135] in a study found that AGM starting against the usual time of 10.00 am and in remote locations tend to be poorly attended by members.

Section 217 of the CAMA 1990 requires notice of at least 21 days before the AGM except where members agree on a shorter notice. However, this is rarely practiced. In the English case of *Re Pearce Duff Co Ltd*,[136] the court held that the fact that members present at AGM agree on short notice of AGM does not automatically guarantee that short notice should always be given to them, because they may decide to change at any time. This is to sanction right of members of a company to decide the length of notice, but in any case, not below twenty one days.

In Malaysia for example, the length of notice depends on whether it is a private or public company and whether the meeting is to pass a special resolution or not.

[133] See also Oluwasegun, fn. 59.
[134] S. O. Abdulmalik and A. C. Ahmad, "Corporate Governance and Financial Regulatory Framework in Nigeria: Issues and Challenges," *Journal of Advanced Research in Business and Management Studies* 2 no. 1 (2016): 50-63. ISSN (online): 2462-1935.
[135] David Yermack and Yuanzhi Li, "Evasive Shareholder Meetings," *NBER Working Paper No.* 19991 Issued in March, (2014). http://www.nber.org/papers/w19991 (accessed September 28, 2015).
[136] *(1960) 3 All ER 222.*

Generally, 14 days notice[137] is required in case of a private company where no special resolution is to be passed at the meeting. However, 21 days notice[138] is required in case of an AGM of a public company or longer period as may be determined by the constitution of the company. In this regard, Principle C of the MCCG 2017 tasks the management to ensure members participation in the AGM. This includes giving them adequate notice of meetings[139] now 28 days notice is required under Principle C of MCCG 2017.

Section 218 of the CAMA 1990 specified the contents of a notice of meeting. The notice shall state the venue, date, and time of the meeting, as well as the nature of business to be discussed at the meeting, otherwise no such business is allowed to be deliberated during the meeting.[140] The management is obliged to put in place effective means of communication with members.[141] Section 220 CAMA 1990 made provision relating to mode of serving notice of meeting. This section only recognised two methods of serving notice of meeting. Section 219(1)(a) of CAMA 1990 specifically recognised members of a company as the first category of parties entitled to received notice of AGM.

1.8.3 Remedies Available to Members

This part contains a review of related literature on member's remedies in the event of default to call AGM or to give notice of meetings. In this regard, section 212 of CAMA

[137] s. 316(1) CA 2016.
[138] s. 316(2)(a) CA 2016.
[139] Principle 24 CCGPCN 2011.
[140] s. 218(3) CAMA 1990.
[141] CCGPCN 2011.

1990 prescribed a penalty of fifty naira (₦50.00) every day for failure to call statutory meeting. Section 213(5) CAMA imposed a fine of five hundred Naira (₦500.00) on the company for failing to call AGM while the Act is silent about monetary fine to be imposed in default of holding EOGM. Section 215(6) CAMA 1990 mentioned that reasonable amount incurred by member who requisitioned to call EOGM may be paid.

Mohammad and Yee[142] were of the view that the provisions of section 145(5) CA 1965 (now section 316(6) CA 2016) that allows 'accidental omission' as a defence for default in serving notice of AGM would hardly be in favour of members, because of the wide gap in interpreting circumstances that amount to 'accidental omission.' This is a similar situation under section 228 of the CAMA 1990 where 'accidental omission' was given as a defence to the management. According to Hannigan, failure to notify members about AGM has the effect of nullifying the proceedings while failure to hold AGM more than once is an offence.[143] The court in the English case of *Young v. Ladies Imperial Club*[144] invalidates a meeting as well as the resolution taken at the meeting because some members of the company were not served with notice of the meeting. The court further held that the fact that a member indicates interest not to participate in the meeting (on health ground) does not warrant the company from serving such a member with notice of the meeting. This is to sanction member's right to receive notice. However, in the case of *Re West Canadian Collieries Ltd*[145] the company failed to serve notice of meeting on specific members on the ground of default of the machine which is used to arrange envelopes for sending notices of meeting. The court held that such instance falls within the meaning of 'accidental omission' and the proceedings at

[142] See also Mohammad and Yee, fn. 39.
[143] See also Hannigan, fn.51.
[144] *(1920) 2 KB 523.*
[145] *(1962) Ch 370.*

the meeting was valid. The literature under this heading basically concerns statutory provisions as little has been said by authors on the issue of remedies. This study would have recourse to the selected jurisdictions to fill in the gap of literature.

1.8.4 Relevance of ICT in Corporate Meeting

In this part, effort would be made to review some literature on the relevance of ICT to corporate governance in general and subsequently, the review would focus on to how notice of meetings and voting could be improved through the application of ICT. Alok[146] argued that the concept of corporate governance is relevant to nation's financial and human development. Given its importance, there is need to improve corporate governance through the use of ICT which is believed to ensure transparency and efficiency. Nor Hayati and Hasani[147] acknowledged the importance of corporate meetings, particularly as an avenue to check management's activities. The concept of meeting in the present day need no physical appearance of all members. This is made possible through e-meetings, where resolutions can be passed without the physical presence of all members. This development was in line with the decision of English court in *Byng v. London Life Association Ltd*[148] where it was held that meeting might take place in more than one room, provided other members eligible to attend the meeting are carried along (provided they can see and hear) what is been discussed in the meeting. In a related decision of the court in *Wagner v. International Health*

[146] Alok Kumar, "e-Initiative in Corporate Governance: An Analysis of Relevant Provisions of Companies Act 2013," *Abhinav International Monthly Refereed Journal of Research in Management & Technology*, 4, Issue 5 (2015) Online ISSN-2320-0073. Available online on www.abhinavjournal.com (accessed 30/12/15).
[147] See also Nor Hayati and Hasani, fn. 30.
[148] *(1989) 1 All ER 560.*

Promotions,[149] it was held that a meeting of directors via telephone was valid. The court opined that meeting as provided by the article of association is not only restricted to physical meetings but meeting of the minds.

The argument by Nor Hayati and Hasani[150] in a way recognised the practice of e-meetings by companies. It is a relevant study, though mainly concerns Malaysian perspective. The current study proposes to look into Nigerian perspective. This makes the current study different from the one by Nor Hayati and Hasani in terms of jurisdiction particularly the CAMA 1990 has no provision recognising e-meeting. Section 216 of CAMA 1990 made provision regarding the choice of venue. It provides that, "All statutory and annual general meetings shall be held in Nigeria." However, Section 327(2) CA 2016 on the other hand, made provision on conducting e-meeting since meeting can be conducted in more than one venue provided the main venue is in Malaysia. Section 216 CAMA 1990 appears to limit the choice of venue to Nigeria. There is no provision for conducting meeting in more than one venue. This study would, therefore, look at how to reconcile this provision with the use of e-meeting under CAMA 1990.

In a relation to use of electronic communication, Olagoke[151] was of the view that, members as owners of the company have the ultimate right to decide whether electronic service notice of meetings should be resorted by a company. If they agree on electronic service, nothing prevents the company from service by electronic

[149] *(1994) 15 ACSR 419.*
[150] See also Nor Hayati and Hasani, fn. 30.
[151] See also Olagoke, fn. 65, 42-51.

medium. Olagoke[152] further highlights that the current CA 2016 made electronic service as alternative to the paper based method.

According to Bayo,[153] the current provisions of CAMA 1990 only recognised paper-based communication and that resorting to e-communication has the potentials of enhancing member's participation in the AGM. This is relevant to the proposed study but is only limited to conveying notice of meetings through an electronic medium, without looking at other aspect of this study. Fredric[154] examined the protection of e-mail messages in corporate communication. He was of the view that users may only be comfortable to use electronic medium where there is kind of assurance to security of information being shared through this medium. This is relevant to the current study having to do with disseminating notice of AGM via e-mail. Arthur and Philippe[155] on hand discuss some stages involves in conducting e-meeting which ranges from disseminating notice of meeting, providing space, taking attendance electronically and transparent voting process. Arthur and Philippe[156] argued that e-meeting can only be convened when members consented to it. This is where members consent through article of association may be relevant. Jessica[157] examined some of the avenues used in conducting e-meeting. It may be using internet, teleconference, video and other electronic means. Jessica[158] acknowledged that e-meeting might limit face to face interaction.

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[152] Olagoke, fn. 65, 42-51.
[153] See also Bayo, fn. 49.
[154] Fredric B. Gluck, "Protection of Electronic Mail and Electronic Messages," *Information Management & Computer Security* 2 Iss 1 (1994): 28 – 40 http://dx.doi.org/10.1108/09685229410058777
[155] Arthur Mitchell and Philippe Bennett, "Virtual Meeting,"(2006). US2006/0095376.
[156] Arthur and Philippe, fn. 155.
[157] Jessica M. Natale, "Exploring Virtual Legal Presence: The Present and the Promise," *Journal of High Technology Law* 1 no. 1 (2001) 157. Citation: 1 J. High Tech. L. 157 2002. http://heinonline.org (accessed April 13, 2016).
[158] *Ibid.*

Hasani *et al*.,[159] were of the view that the use of e- meetings is developing in many jurisdictions and if properly utilised, it would save cost and ensure prompt delivery of notices to members. In the same vein, Krans[160] viewed e-corporate meeting as an efficient means of meeting where members discuss proposals affecting the company without their physical presence. The process is less costly and saves time, although many jurisdictions in the world require the physical presence of members at AGM. However, much need to be done, in terms of detail legal provisions on e-meetings and the fact that not all members would have access to ICT. The above studies emphasised on the importance of e-notice in company meetings which are different from the jurisdiction in this study, hence the need for the current study. Richard[161] maintained that "face to face meeting" gives opportunity for members to discuss and express their views, in such a manner that would hardly be possible through other means of communication. He argued that "face to face" meeting should only be complemented by other means of meeting, instead of abolishing it entirely. Similarly, Dirk[162] argued that e-meetings could help in corporate communication. However it should not replace the traditional face to face meeting. Discussing in the same line but for different reasoning, Aishah[163] was of the view that any legal reform seeking to do away entirely with physical meeting should not stand. It is acceptable to introduce e-meetings but not to replace the physical meeting. Replacing physical meeting with the e-meeting

[159] See also Hasani, *et al*., fn. 69.
[160] Krans, Anatoli Van der, "The Virtual Shareholders Meeting: How to make it work?" *Journal of International Commercial Law and Technology,* 2 (1) (2007).
[161]Richard, D. Arvey, "Why Face-to-Face Business Meetings Matter," (2009).https://www.vdr-service.de/fileadmin/ (accessed March 20, 2016).
[162] Dirk Zetzsche*, "*Corporate Governance in Cyberspace: Blueprint for Virtual Shareholder Meetings." (n.d). http://ssrn.com/abstract=747347 (accessed May 12, 2016).
[163]Aishah Bidin, "Shareholders' Meetings in Cyberspace," (2013)1 LNS (A) xxvii Legal Network Series 1.

may affect the exercise of votes at meeting as well as how management are being accountable to members.

In the Malaysian case of *Tan Chong Teck v. Gan Seong Chin & 5 Ors*,[164] the court held that the AGM was valid even though a member was not given ample time to speak at the meeting. This decision shows that member's right to speak at meeting is not absolute; however, members should be encouraged to exercise their right and even the court should endeavour to do so. The above studies differ with the current study in terms jurisdiction and the scope of the study hence the justification for the current study.

1.9 Conclusion

Based on the literature reviewed, it is seen that various legal provisions recognised member's right of participation in AGM in Nigeria. However, lack of legal provision under CAMA 1990 to accommodate the application ICT in AGM and the inadequacy of the remedies affects members participation in the AGM. Additionally, the dearth of literature by Nigerian authors necessitates the current study. This makes it imperative to have recourse to other jurisdictions to complement the scarce literature in Nigeria.

1.10 Outline of Chapters

The study is divided into six chapters. Chapter one contained the general overview of the study that involved the introductory aspect; research problems; research questions;

[164] *(2014) 1 LNS 17.*

objectives; significance of the study; research methodology; limitation of the study; literature review; and outline of chapters.

Chapter two discusses the concept and framework of company law in Nigeria. This includes various theories/philosophy supporting member's participation in the AGM; the historical background of company law in Nigeria; and the legal and institutional framework of company law in Nigeria.

Chapter three focuses on various laws; cases; rules; regulations and code of corporate governance relating to notice of AGM. References were made to relevant provisions of CAMA 1990 and CA 2016 in addition to the CCGPCN 2011 and MCCG 2017 among other rules. Similarly, the chapter contained report and analysis of data from the qualitative interview. This chapter answered research question one and achieved research objective one respectively.

Chapter four discusses the concept of remedies and member's remedies regarding notice of AGM. Other issues addressed in the chapter includes the adequacy of member's remedies; enforcement of remedies; the role of regulators and shareholder association in the enlightenment and enforcement of remedies; and the report and analysis of qualitative interview. This chapter answered research question two and achieved research objective two respectively.

Chapter five focused on the application of ICT in corporate meetings. This includes the lack of recognition of ICT under the CAMA 1990; use of electronic medium to serve notice of AGM; e-meeting; the prospect and challenges for the application of

ICT in AGM in Nigeria. This chapter answered research question three and achieved research objective three.

Chapter six being the last chapter contained summary of findings; recommendations; and implication for future study. It is necessary to state that the report and analysis of the interview appeared in the relevant chapters. Equally, the analysis of the qualitative data namely thematic/content appeared in mainly in chapter three, four and five except for consolidating literature and supporting authored work regarding the problem statement which appeared in chapter one and two. The next chapter would focus on the concepts and frameworks of company law in Nigeria.

CHAPTER TWO

CONCEPTS AND FRAMEWORKS OF COMPANY LAW IN NIGERIA

2.1 Introduction

This chapter seeks to lay a background of the study by discussing the nature of Nigerian legal system (generally) and how the current corporate laws were developed. The chapter would try to examine various theories of the corporation and how they relate to member's participation in corporate meetings. Similarly, the chapter would look at relevant regulatory bodies in Nigeria that have role in regulating corporations and by extension corporate meetings. Subsequent discussion in this chapter would include various types of meeting as well as division of powers between members and the management of a company.

2.2 Theories/ Concepts

Under this heading, various theories of corporation that are relevant to this study would be highlighted. The discussion is not going to be in detail since the essence is to establish a nexus between these theories and how they support the current study. These are: corporate personality theory; agency theory; contract theory; shareholder primacy theory; and corporate governance theory. The civil recourse theory and corrective justice theory would be highlighted in chapter four dealing with member's remedies.

2.2.1 Corporate Personality Theory

The word "corporation" is derived from the latin word "*corporatus"* which means to make into a body, or rather a body of men who come together for a common purpose. However, the question of whether this body of men has separate rights distinct from that of individual members occupied the minds of German and French philosophers throughout the nineteenth century.[165] This resulted to various theories of corporate personality, which include the creature theory, fiction theory, concession theory. Savigny as the proponent of the *creature theory* believed in the individual nature of a person, which confers certain inalienable rights duly recognised by law in order to show the unique status of an individual.[166] This means that, there exists legal relationship between one person and another. Hence, individuals are free to enter into an association, but the resulting group has no independent existence or pre-existing rights on its own. However, the law recognised the status of this body as it becomes a legal entity "*persona ficta"* which means an "artificial, moral, or juristic person." The personality of corporation is referred to as invisible and intangible person without body and soul. It is not real.[167] In this regard, the *fiction theory* recognised corporation as a legal fiction. It allows corporations to act in similar ways as human beings act, even though there are obvious differences between human beings and corporations.[168] The

[165] Schane Sanford A., "The Corporation is a Person: The Language of Legal Fiction," 61 *Tul. L. Rev.* 563 (1986-1987), http://heinonline.org; Katsuhito Iwa, "Persons, Things and Corporations: The Corporate Personality Controversy and Comparative Corporate Governance," *American Journal of Comparative Law* 47, no. 4 (Autumn, 1999): 583-632; F Pollock, "Has the Common Law received the Fiction Theory of Corporations," *LQ Rev*., (1911).

[166] George Heiman, *ed., Associations and Law: The Classical and Early Christian Stages*. Repr. (Toronto: University of Toronto Press, 1977).

[167] Halyani et al. fn. 4 at 191; Zainal Amin Ayub, Zuryati Mohamed Yusoff & Azrae Ahmad Nasyran, "Separate Legal Entity under Syariah Law and Its Application on Islamic Banking in Malaysia: A Note," *International Journal of Banking and Finance* 6, no. 2 (2009): 1-17; *Trustees of Dartmouth College v. Woodward 17 U.S. (4 Wheat.) 518, 636 (1819).*

[168] Maximilian Koessler, "Person in Imagination or Persona Ficta of the Corporation," 9 *La. L. Rev*. (1949): 437.

concession theory postulates that, state law is the only instrument that recognises and confers legal personality upon a corporation.[169] This means that corporate personality traced its origin from the law of a state. It cannot be conferred by anybody apart from the law of a state. The theory of corporate personality has reflected under the CAMA 1990 wherein various effects of incorporation were provided.[170] Similarly, various decisions of Nigerian court affirmed the recognition of the corporate personality principle.[171] This theory is the foundation of the present corporate law for treating members and the company as two separate entities.[172]

2.2.2 Agency Theory

This theory regards corporation as a kind of relationship that links together individuals having a common interest, by creating a balance acceptable to all of them.[173] Jensen and Meckling argued that this theory regulates the relationship between principal and agent. In a corporation, members stand as "principal" while the company (management) stands as "agent."[174] This is because, members invest their capital and give some authority to the management to act in their behalf, given that it is difficult for members to possess both capital and expertise to manage the business at the same

[169] Robert Hessen, "New Concept of Corporations: A Contractual and Private Property Model," 30, *Hastings L. J*. 1327 (1978-1979); Hale v. Henkel 201 U.S 43, 74 (1906).
[170] s. 37 CAMA 1990; see also Zuhairah Ariff Abd, Ghadas, Nasarudin Abdul Rahman, and Halyani Hassan, "'Shari'ah Corporation': The Legal Entity of Corporation from the Malaysian Law and Shari'ah Perspective," *International Journal of Liability and Scientific Enquiry* 6.4 (2013): 232-246 where the authors relate corporate personality with the previous Companies Act 1965.
[171]*Dunlop Nigerian Industries Ltd. v. Forward Nigeria Enterprises Ltd. & Anor, A. L. R Comm. (1976) 243; M. A. Omisade & Ors v Harry Akande (1987) LPELR 2639 S.C; Tsokwa Oil Marketing Co. v. U.T.C. (Nig.) Plc (2002) 12 NWLR (Pt 52) 437 C.A.*
[172]*Tsokwa Oil Marketing Co. v. U.T.C. Nig. Plc (2002) 12 NWLR (Pt 52) 437 C.A.*
[173] Jensen, Michael C. & Smith, Clifford W., "Stockholder, Manager, and Creditor Interests: Applications of Agency Theory" (July 1, 1985); Rashidah Abdul Rahman and Mohammad Rizal Salim, *Corporate Governance in Malaysia Theory, Law and Context* (Malaysia: Sweet & Maxwell, 2010) 21.
[174] Michael C. Jensen and William H. Meckling, "Theory of the Firm: Managerial behavior, Agency Costs and Ownership Structure," *Journal of Financial Economics* 3 (1976): 305-360.

time.[175] It is relevant to point out that both the principal (members) and the agent (management) benefits from the relationship. While the principal (members) got return on investment; an agent (management) get his benefit from running the corporation.[176] The agent (management) is obliged to act in the best interest of the principal (members).[177]

However, problem(s) may arise in the relationship. Arnold and De Lange[178] pointed out that risk tolerance is viewed at a different level by the principal (members) and the agent (management). Thus, while members are always concerned with high return on investment, the management on the one hand is normally interested in economic aspect which they stand to benefits.[179] Similarly, there appears to be issue of adverse selection and uncertainty by the principal (members) which normally exists in the event where they are not sure about the performance of the agent (management).[180] There is equally a conflicting interest in terms of decision making. The principal is always interested in having lasting solutions to problems while an agent may be willing to proffer short-term solution so that the principal would appreciate his performance.[181] These were some of the issues that led to the emergence of "agency cost."[182]

[175] Claire E. Crutchley & Robert S. Hansen, "A Test of the Agency Theory of Managerial Ownership, Corporate Leverage, and Corporate Dividends," *Financial Management* 18, no. 4 (winter, 1989): 36-46.
[176] Rashidah and Mohammad, 173.
[177] *Ibid.*
[178] Arnold, B. and De Lange, P., "Enron: An Examination of Agency Problems: Critical Perspectives on Accounting," 15 no. 6-7 (2004): 751-765.
[179] Coase, R., "The Nature of the Firm," *Economica* 4, no.16 (1937): 386-405; Simon, H.A., "A Formal Theory of the Employment Contract," *Econometrica* 19 (1951): 293- 305.
[180] Rashidah and Mohammad, fn., 173.
[181] Steven V. Mann and Neil W. Sicherman, "Agency Costs of Free Cash Flow: Acquisition Activity and Equity Issues," *Journal of Business* 64, no. 2 (Apr. 1991):213-227. http://www.jstor.org/stable/2353063 (accessed October 23, 2016).
[182] Michael and William fn. 174.

The agency theory emphasised on the use of proper control mechanism between members and the management that ensure reduction of cost in monitoring the activities of the management,[183] which is possible through exercise of voting right at a general meeting.[184] Joseph, on one hand, views agency theory as a mechanism of control between a corporation and the market environment that should take into account moral antecedent.[185] It is the practice that the principal and agent hold contrary goals about their objectives.[186] While the principal always expects best result (maximum profit in a corporation) an agent would try to achieve his personal benefit at the expense of the principal.[187] This needs effective monitoring of the management and limiting available funds that are used at the discretion of the management while giving incentives to the management on the other hand.[188] The incentives aimed at limiting the agency conflicts that arise between the principal and agent, and aims to protect the interest of the principal.[189] By logical application of this theory to the current study, it reveals the need for members to participate in the activities of company through "meetings." This theory has reflected in various provision of CAMA 1990 that recognised separation of powers between members and management.[190]

[183] Rashidah and Mohammad, fn. 173.
[184] Baums, T., "General Meetings in Listed Companies – New Challenges and Opportunities," Company Law Reform in OECD Countries: A Comparative Outlook of Current Trends, Stockholm, Sweden (2000).
[185]Joseph Heath, "The Uses and Abuses of Agency Theory" *Business Ethics Quarterly,* 19 (2009): 497-528. doi:10.5840/beq200919430.
[186] Anthony J. Nyberg, Ingrid Smithey Fulmer, Barry Gerhart and Mason A. Carpenter, "Agency Theory Revisited: CEO Return and Shareholder Interest Alignment," *Academy of Management Journal*, 53 no. 5 (October 2010):1029-1049. http://www.jstor.org/stable/20788807.
[187]Susan P. Shapiro, "Agency Theory" *Annual Review of Sociology*, 31 (2005): 263-284. http://www.jstor.org/stable/29737720.
[188] Susan, fn. 187.
[189] Sok-Hyon Kang, Praveen Kumar and Hyunkoo Lee, "Agency and Corporate Investment: The Role of Executive Compensation and Corporate Governance" *Journal of Business* 79 no.3 (May 2006):1127-1147. http://www.jstor.org/stable/10.1086/500671 (accessed May 2, 2016).
[190] s. 63 & 64 CAMA 1990.

2.2.3 Contract Theory

The contract theory originated from the United States of America and was developed by the Chicago school of law and economics.[191] It is one of the most influential theories in the present day as relates to corporate governance.[192] The theory is linked with agency theory, particularly regarding its emphasis on maximising person's self-interest as a best way of making agents to act morally.[193] A company under this theory is regarded as a nexus consisting of various contracts entered into by different stakeholders with a view to serve the interest of the company while taking the interest of other stakeholders.[194] Under this theory, members invest their capital with the hope of getting return. This entitles members the entire excess profit left after settlement of other stakeholders.[195] Members are regarded as being 'autonomous" under this contract theory, and therefore, they are given ultimate control about how the company is to be managed because they bear high percentage of risk in the company; hence they are vested with power of control.[196]

The theory viewed management as 'imperfect actors" due to their disloyal attitudes to the corporation which result in additional monitoring cost on members. Thus, "a venture would be worth more if managers are tasked with a clear mission, such as the maximization of stock price, than with a more amorphous mission involving the

[191] Oliver Hart, Corporate Governance: "Some Theory and Implications," *Economic Journal* 105, no. 430 (1995): 678-689 at 680.
[192] *Ibid.*
[193] F. Easterbrook & D. Fischel, "Contract and Fiduciary Duty," *Journal of Law and Economics* 36 (1993): 425.
[194] E. Fama, "Agency Problems and the Theory of the Firm," *Journal of Political Economy* 88 (1980): 288 at 290.
[195]A. Johnson, "After OFR: Can UK Shareholder Value still be Enlightened? *European Business Organisation Law Review* 7 (2007): 817 at 821.
[196] M. Van der Weide, "Against Fiduciary Duties to Corporate Stakeholders," *Journal of Corporate Law* 21 (1996): 27 at 57.

balancing of competing interest."[197] The AGM focused on addressing these challenges.[198] The contract theory has reflected under the Nigerian CAMA 1990.[199] In this regard, the law provides on the effect of memorandum and article of association:

> Subject to the provisions of this Act, the memorandum and articles, when registered, shall have the effect of a contract under seal between the company and its members and officers and between the members and officers themselves whereby they agree to observe and perform the provisions of the memorandum and articles, as altered from time to time in so far as they relate to the company, members, or officers as such.

The above provision made it clear that company's memorandum and article of association has the effect of a valid and enforceable contract between parties to it. In the English case of *Thomas Logan Limited v. Davis*,[200] Warrington J. held that the power to manage the company is vested in the article of association on the board of directors. This power can only be taken by alteration of the article itself. A similar decision was reached by the Nigerian Court of Appeal in the case of *Longe v. FBN PLC*[201] where the court held that the powers vested on the management was a contractual power that can only be taken by way of amendment or alteration through passing resolution. Otherwise the board cannot be questioned. The memorandum and article of association constitute a binding contract not only between the company and its shareholders but equally between individual shareholders themselves.[202] This theory is relevant to the current study particularly relating to the nature of the contract

[197]Lee, Ian B. "Efficiency and Ethics in the Debate about Shareholder Primacy," *Delaware Journal of Corporate Law* 31, no.3 (2006).
[198] Apostolides, N., and Boden, R., "Cedric the Pig: Annual General Meetings and Corporate Governance in the UK," *Social Responsibility Journal* 1 no. 1, (2005): 53-62; C.J. Cordery, "Annual General Meeting as an Accountability Mechanism," Working Paper no.23, University of Wellington, New Zealand (2005).
[199] s. 41 CAMA 1990.
[200] *(1911) 104 L.T. 914, 916.*
[201] *(2006) LPELR-7682 CA.*
[202] *NIB Investment (West-Africa) v. Omisore (2006) 4 NWLR (Pt. 969) 172 at 200.*

between members and management of the company, which calls for monitoring by members. This is possible through the AGM.

2.2.4 Shareholder Primacy

This concept was developed base on partnership principles that recognised management of business as entirely within the control of its members. This is equally the case with UK company law which stressed the importance of members as vital organ in a company.[203] Grantham was of the view that, company was regarded as a big partnership owned by members until mid-nineteenth century when the separate personality of corporation was fully recognised.[204] Members of a company are regarded as "associated partners" in law.[205] Although the decision of the House of Lords in *Salomon's* case recognised separate personality of a company, Megarry J. in *Gaiman v. National Association for Mental Health*[206] acknowledged the importance of shareholder value by stressing that "interest of the company" represents interest of members of the company. Thus, the interest of members through maximisation of profit was reflected in the UK as a corporate ideology, in addition to theory of shareholder wealth maximisation.[207] The need for enhancement of shareholder primacy is critical regardless of any other objective a company set to achieve. This was particularly stressed in the Hampel Report on Corporate Governance.[208] The Common Law emphasised on shareholder primacy particularly in relation to director's

[203] Shuangge Wen, *Shareholder Primacy and Corporate Governance: Legal Aspects, Practices and Future Direction* (New York: Routledge Taylor & Francis Group, 2013), 55.
[204] R. Grantham, "The Doctrinal Basis of the Rights of Company Shareholders" *Cambridge Law Journal*, 57 (1998): 560.
[205] D. Feldman & F. Miesel, ed., *Corporate and Commercial Law: Modern Developments* (London: Lloyd's, 1996), 13 at 26.
[206] *(1971) Ch 317.*
[207] S. Bainbridge, "Director Primacy, the Means and Ends of Corporate Governance," *Northwestern University Law Review* 97 (2003): 576.
[208] Hampel Committee, the Hampel Report on Corporate Governance: Finance Report, (1998) para. 1.16. http://www.ecgi.org/codes/documents/hampel_index.htm (accessed May 2, 2016).

duty of loyalty to the company.[209] Although a director generally owes his duty to the company, however, he has an inherent discretion to discharge the duty in the best interest of his principal (members).[210] Shareholder primacy does not attach much significance to the interest of other stakeholders except where it benefits shareholders.[211] In the English case of *Hutton v. West Cork Railway Co*.[212] Bowen LJ held that taking into account the interest of other stakeholders in a company is a qualified one. Directors are only obliged to consider the interest of (employees, as stakeholders) where it would benefit members, and in the instant case, paying compensation to the employees when the company is in the process of winding up is not going to benefit the members. This decision has been followed in several judicial decisions including *Parke v. Daily News Ltd*.[213] This theory is equally relevant as it emphasised on interest of members.

2.2.5 Corporate Governance

There is no universally accepted definition of corporate governance. It was defined to mean "the system by which companies are directed and controlled."[214]The Hampel Committee adopted this definition on Corporate Governance, 1998 and the Higgs Review of Role of Non-Executive Directors, 2003 in the United Kingdom (UK).[215] The Financial Reporting Council (FRC) equally in its combined Code of Corporate Governance 2009/2010 adopted this definition. The FRC maintained that corporate governance is about what and how the board of a company set its values which is

[209] P. Davies, S. Worthington and E. Micheler, *Gower and Davies: Principles of Modern Company Law*, 8th ed. (London: Sweet & Maxwell, 2008), 515.
[210] *Boulting v. Association of Cinematography, Television and Allied Technicians (1963) 2 QB 606.*
[211] Shuangge, fn. 203.
[212] *(1882)23 Ch D 654.*
[213] *(1962) Ch 927.*
[214] According to Cadbury Report on Financial Aspect of Corporate Governance (December 1, 1992). http://www.ecgi.org/code.php?code_id=132 (accessed July 21, 2016).
[215] http://www.bis.gov.uk/files/file23012.pdf (accessed July 21, 2016).

distinguished from managing the daily affairs of the company.[216] According to OECD, corporate governance means:[217]

> The system by which business corporations are directed and controlled. The governance structure specifies the distribution of rights and responsibilities among different participants in the corporation such as the board, managers, shareholders and other stakeholders and spells out the rules and procedures for making decisions on corporate affairs. By doing this, it also provides the structure through which the objectives are set, and the means of attaining those objectives and monitoring performance.

The above definition appears more elaborate to suit the context of the current study since it relates to members of the company and management. Thus, corporate decisions are to reflect certain values including trustworthiness, openness, accountability, transparency and the ability to engage other stakeholders. This helps in making sound corporate decisions.[218] Two main theories of corporate governance reflect in most of the previous studies. These are the shareholder value and stakeholder theory. The shareholder value theory which is also known as "enlightened shareholder value" has reflected in the CA 2006. The theory emphasised on the interest of members above any other stakeholder in a company. In this regard, the UK Common Law Review 2002 further elaborate that management of a company has the greatest goal to ensure the success of a company while considering the interest of members first.[219] Shareholder value is said to imply an increase in stock prices, good return on investment, and increase in capital among other things.[220] This theory gives priority to the interest of members and has some similarities with the shareholder primacy, which

[216] Richard Smerdon, *Practical Guide to Corporate Governance*, 4th ed. (England: Sweet & Maxwell, 2010), 2.
[217] *Ibid*.
[218] Richard Smerdon, OECD, 1999.
[219] Modernising Company Law, Presented to Parliament by the Secretary of State for Trade and Industry by Command of Her Majesty, (2002).
[220] Jeremy Booker, Conference organised by London Stock Exchange, (March 2006) as appeared in Richard Smerdon.

was earlier discussed. The stakeholder theory, on the other hand, emphasised on interest of other stakeholders in the company including employees, creditors, suppliers and customers. In other words, it concerns about the community and environment where the company carries on its business.[221]

2.2.6 Article of Association and Freedom of Contract

Generally, members of a company have the freedom to adopt any rule or regulation they agree to govern their relationship subject to statutory provisions and other policy regard.[222] This is basically contained in the article of association and sometimes complimented by shareholders agreement.[223] The article of association and shareholders agreement exists as a contractual obligation between members and the company over what should be done and what should not be done.[224] These as a whole are termed as "bargain" between members and the company. The power to decide or enforce the bargain between members themselves or between members and the company lies with members or (majority of them).[225] Thus, in *Cobbe v Yeoman's Row Management Ltd*[226] the court held that "*In the commercial context, a claimant is typically a business person with access to legal advice and what he or she is expecting to get is a contract."* A court cannot interfere to make unenforceable contracts to appear as a legal contract.[227] In this regard, the section 33 of the CAMA 1990 provides the memorandum and articles, has effect of a contract under seal between the company

[221] Jeremy, fn. 220.
[222] Robin Hollington Q.C., *Hollington on Shareholder's Rights,* 17th Edn. (England: Sweet & Maxwell, 2013).
[223] Lucian Arye Bebchuk, "The Case for Increasing Shareholder Power," *Harvard Law Review* 118, no. 3 (Jan. 2005): 833-914.
[224] O. Kahn-Freund, "Articles of Association and Contractual Rights," *The Modern Law Review* 4, no. 2 (Oct. 1940): 145-148 at 148.
[225] Robin fn, 222 at 218.
[226] *(2008) 1 W.L.R 1752.*
[227] *Crosso No. 4 Unlimited v Jolan Ltd (2011) ECWA Civ 1619; (2012) 2 All E.R 754 at 133.*

and its members. The article binds the company and its members to the same extent as if each member had subscribed his name and affixed his seal thereto or otherwise executed the same.[228] This position was re-affirmed by Supreme Court of Nigerian in *Yalaju Amaye v A. R.E.C.*[229] The essence of laying this background is to understand that the issue of corporate meetings is a statutory provision supplemented by the article of association.

2.3 Nature of Nigerian Legal System and the Historical Background of Company Law in Nigeria

Nigeria is the most populous nation in Africa.[230] In 1960, Nigeria got independence from Britain[231] while in 1963, it attained a republican status within the British Commonwealth with two systems of administrations been used interchangeably, namely; military and civil administrations.[232] The Constitution of the Federal Republic of Nigeria 1999, as amended is the supreme law in Nigeria which came into effect on May 29, 1999, which paved the way for the current democratic dispensation in Nigeria.[233] At the moment, Nigeria has a total of 36 states with the Federal Capital Territory situated in Abuja. The history of Nigerian legal system would not be complete without referring to the English Common Law.[234] This is because, Nigeria

[228] Agbonika John, Alewo Musa and *Olong Matthew Adefi*, "The Legal Effects of Articles of Association of a Company: Perspectives on Corporate Governance in Nigeria," *Journal of Law, Policy and Globalization* 28 (2014): 124-128.
[229] *(1990) 4 NWLR (Pt 145) 422.*
[230] Ros Atkins, Welcome to the most populous black nation in the world - *BBC* May 13, 2007 http://www.bbc.co.uk/blogs/worldhaveyoursay/2007/05/welcome_to_the_most_populus_bl.html (accessed December 20, 2016).
[231]Amaeshi, Kenneth M.; Adi, Bongo C.; Ogbechie & Chris; Amao, Olufemi O. "Corporate Social Responsibility in Nigeria: Western Mimicry or Indigenous Influences? *Journal of Corporate Citizenship* 24 (December 2006): 83-99.
[232] Yemisi Dina, John Akintayo & Funke Ekundayo "Guide to Nigerian Legal Information," http://www.nyulawglobal.org/globalex/Nigeria1.html (accessed May 28, 2016).
[233] RT Suberu, "Supreme Court and Federalism in Nigeria," *Journal of Modern African Studies* (2008).
[234] Charles Mwalimu, "Bibliographic Essay of Selected Secondary Sources on the Common Law and Customary Law of the English-Speaking Sub-Saharan Africa," 80 *L. Lib. J* (1988): 241-280 at 244.

was colonised by Britain and therefore the legal system was a replicate of English law, except for some few alterations to suit local purposes.[235] Therefore, English Law forms a substantial part of Nigerian legal system. The sources of Nigerian law are the Constitution (as the groundnorm); legislation made at the federal; and the state level in the form of (Act, Decree, Law, and Edict) during civilian and military administration, as well as Received English Law, Customary and Islamic Law, and Judicial Precedents.[236]

Before Nigeria's independence, the citizens were mainly engaged in farming, rearing and hunting within the country until the time Nigeria came in contact with North Africa during the trans-saharan trade.[237] This was the beginning of international trade between Nigeria and other countries in Africa.[238] In the year 1879, George Goldie incorporated the United Africa Company (UAC) as one of the earliest modern firms that operated within the current Nigerian territory. UAC was equally one of the earliest firms to receive the British concession to manage areas surrounding Niger River under the Charter of the Royal Niger Company in 1886.[239] This concession was given by Britain and not Nigeria, and the UAC had to compete with other British merchants that were initially slave traders but changed to other types of trade after the abolition of the slave trade.[240] The Charter (of the Royal Niger Company) specified that trading within the designated area is free and that the customs of the people should be respected except

[235] C. N. Okeke, "International Law in the Nigerian Legal System," 27 *Cal. W. Int'l L.J*. 311 (1996-1997).
[236] Charles Mwalimu, *Nigerian Legal System* vol. 1 (New York: Pitalang Publishing Inc, 2005), 18-19.
[237] Toyin Falola & Matthew M. Heaton, *History of Nigeria* (New York: Cambridge University Press, 2008), 243-244.
[238] Orojo, J.O., *Company Law and Practice in Nigeria*, 3rd Edn. (Lagos, Nigeria: Mbeyi & Associates Nigeria, 1992),
16-20.
[239] A. F. Mockler-Ferryman, "British Nigeria," *Journal of the Royal African Society* 1, no. 2 (Jan. 1902):160-173 at 163.
[240] *Ibid.*

where they are contrary to the interest of the general public. This comes as a further restriction to the slave trade which Britain classified as "barbarous practice."[241]

In the 19th century, Nigeria witnessed rapid development in both domestic and international trade as a result of the abolition of slave trade and the establishment of British authority over Nigerian colony.[242] Most of the early companies in Nigeria were subsidiaries of British companies and the applicable laws regulating companies were statutes enacted in Britain between 1876 and 1922. The common law; the doctrine of equity; and the statutes of general application enacted on 1st January 1900 subject to any later relevant statute were applicable in Nigeria.[243] This is the background through which some Common Law principles such as the principle of corporate personality as enunciated in the famous case of *Salomon v. Salomon*[244] were received into Nigerian company law.[245] Conversely, the continued growth of trade in Nigeria prompted Britain to promulgate laws that facilitate business activities locally. In this regard, the first company legislation in Nigeria was the Companies Ordinance of 1912, which was a local enactment of the Companies (Consolidation) Act 1908 of England and later Companies Ordinance of 1922 which was consequently repealed and replaced by the Companies Decree, 1968.[246] Both the Companies Decree, 1968 and the current CAMA 1990 were largely modeled on the UK Companies Act 1948.[247]

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[241] "Nigeria, Royal Niger Company: Country Studies." http://www.country-studies.com/nigeria/royal-niger-company.html (accessed April 24, 2016).

[242] Robin Law, ed., *From Slave Trade to Legitimate Commerce: The Commercial Transition in Nineteenth-Century West Africa* (Britain: Cambridge University Press, 1995), 144.

[243] RY Hedges, "Legal Education in West Africa" 6 *J. Soc'y Pub. Tchrs. L. n.s.* (1961): 75.

[244] *(1897) AC 22.*

[245] Orojo, fn, 238.

[246] Elewechi N. M. Okike, "Corporate Governance in Nigeria: the status quo" *Corporate Governance* 15, no. 2 (March 2007): 176, http://onlinelibrary.wiley.com/doi/10.1111/j.1467-8683.2007.00553.x/pdf (accessed July 23, 2016).

[247] Guobadia, A., "Protecting Minority and Public Interests in Nigeria Company Law: The Corporate Affairs Commission as a Corporations Ombudsman (2000); in F. McMillan ed., *International Company Law Annual,* 1 (Oxford-Portland: OR Hart Publishing): 81.

The current CAMA 1990 came into effect after series of consultations and debate engaged by the Law Reform Commission of Nigeria. Specifically, a workshop was organised between 10th and 12th February 1988 to analyse various reports and memoranda. Thereafter, a report was submitted to the Honourable Minister of Justice where he finally submits it to the Consultative Assembly to carefully analyse the report. The Consultative Assembly after its deliberations accepted the report, which was promulgated as the CAMA 1990.[248] The reason behind Nigeria's use of laws made in Britain was mainly due to the fact that, prior to 1972, most of the companies in Nigeria were owned and controlled by British people based on their believe that they should have control over the activities of the companies.[249] Franks and Meyer[250] in this regard maintained that the series of laws governing company law in Nigeria entails a system best described as "outsider control system" where Britain being the dominant member controls the business, which placed emphasis on the shareholder value than any other interest.

2.4 Regulatory Framework

This sub heading seeks to highlight the relevant laws, code of corporate governance, rules and regulations on corporate meetings in Nigeria. This would serve as a foundation for discussion in this study concerning the regulatory framework.

[248]Amupitan, Joash, O., *Principles of Company Law in Nigeria* (Lagos, Nigeria: Innovative Communications, 2013), 26-29.
[249] Elewechi, fn. 246.
[250] Franks, J. and Meyer, C., "Corporate Control: Comparison of Insider and Outsider Systems" *working paper*, London Business School, (1994).

2.4.1 Companies and Allied Matters Act (CAMA 1990)

The Companies and Allied Matters Act (CAMA 1990) is the current and the main legislation that governs the affairs of companies in Nigeria. This law came into effect on 2nd January, 1990. The CAMA 1990 was incorporated into the Laws of the Federation of Nigeria in 2004 as Cap C20 LFN 2004, though not amended. The CAMA 1990 has made several provisions regarding member's participation at company meetings. In 2016, there is a bill before the National assembly that seeks to amend the CAMA 1990 but it has not been passed into law.

2.4.1.1 Meetings

In chapter one of this study, the word 'meeting' has been defined under the literature review, but it is important to explain further in this chapter before highlighting on various forms of meeting recognised under CAMA 1990. Thus, the word meeting has not been defined under the CAMA 1990 however, it was considered in the famous English case of *Sharp v. Dawes*,[251] to mean coming together of two or more persons with the aim of discussing and acting upon some matter(s) in which they both share a common interest. Meeting equally represents a gathering of two or more people to discuss and address some issues.[252] The importance of having members to come together in a meeting cannot be overemphasised because it is only through this medium that members can meet and pass a resolution affecting a company as a whole.[253] Based on the above meeting generally involved the gathering of more than one person.

[251] *(1876) 2 QBD 26.*
[252] Augie JCA in the case of *Guaranty Trust Bank Plc. & Anor v. Udoka Anyanwu (2011) LPELR-4220 CA* where the court adopts a dictionary meaning by A.S Hornby, fn. 103 at 957.
[253] *New Resources International Ltd & Anor. v. Oranusi (2011)2 NWLR (Pt 1230) 102.*

However, Lord Coleridge CJ in the same case of *Sharp v. Dawes* stated that "It is, of course, possible to say that the word 'meeting' has meaning different from the ordinary meaning."[254] This gives room for having a meeting with a single member in certain exceptional circumstances. This includes-

(a) where a single member hold all shares of a particular class in a company;[255] where he is given an order by a court to convey meeting;[256]
(b) where a company has only one creditor and such creditor in the course of bankruptcy proceedings was able to prove his debt against the company;[257] and
(c) where the management delegates a committee to perform an act on its behalf and such committee is composed of one member.[258]

In all the above instances a single member may constitute a valid meeting of a company. The next sub heading would discuss on the various types of meeting.

2.4.1.2 Types of Meeting under CAMA 1990

There are basically three main classes of general meeting recognised by CAMA 1990. They are statutory meeting;[259] annual general meeting[260] (AGM); and extraordinary general meeting[261] (EOGM). The other types of meeting under CAMA 1990 includes meeting of the management (board of directors meeting); court ordered meeting;[262] meeting of debenture holders;[263] and meeting of creditors.[264] However, in this study,

[254] *(1876) 2 QBD 29.*
[255] *East v. Bennet Bros Ltd (1911) 1 Ch 163; 27 TLR 103.*
[256] s. 223(2) CAMA 1990.
[257] *Re Thomas; ex parte Warner (1911) WN 123.*
[258] *Re Taurine Co (1883) 25 Ch D 118.*
[259] s. 211 CAMA 1990.
[260] s. 213 CAMA 1990.
[261] s. 215 CAMA 1990.
[262] s. 223 CAMA 1990.
[263] s. 186 CAMA 1990.
[264] s. 539 CAMA 1990.

meeting of debenture holders and creditors would be of less relevance. Hence they are only mentioned among various types of meeting recognised by CAMA 1990.

2.4.1.3 Statutory Meeting

The rationale behind holding a statutory meeting is to enable members of a public company to know how the company was formed and to get familiar with other members of the company that are scattered across the globe.[265] The CAMA 1990 requires both public company limited by shares and a company limited by guarantee to hold a statutory meeting.[266] This type of meeting is mandatory and must be held once in the lifetime of a company[267] within a period of not more than six months from the date of incorporation of the company.[268] The company shall forward a copy of statutory report to every member of the company at least 21days prior to the date of the meeting.[269] It shall be certified by at least two directors of the company or a director and secretary of the company.[270] The statutory report shall state in details-

(a) the total number of shares allotted and the description of whether the shares were fully or partly paid and (whether in cash or otherwise);[271]
(b) total amount of cash received by the company;[272]
(c) detailed particulars of the directors, auditors and secretary;[273]
(d) particulars of pre-incorporation contract[274] (in any); and other relevant issues at the formation of the company.

A certified copy of the report must be sent to the CAC for registration immediately after copies have been sent to members of the company.[275] The company shall keep a

[265] Amupitan, fn. 248 at 207.
[266] s. 211 CAMA 1990.
[267] Amupitan fn. 248 at 207.
[268] s. 211(1) CAMA 1990.
[269] s. 211(2) CAMA 1990.
[270] s. 211(3) CAMA 1990.
[271] s. 211(3)(a) CAMA 1990.
[272] s. 213(3)(b) CAMA,1990.
[273] s. 213(3)(C) CAMA 1990.
[274] s. 213(3)(d) CAMA 1990.
[275] s. 211(6) CAMA 1990.

list of members showing their names, addresses and occupations together with the number of shares held by each member which shall be produced at the commencement of the meeting and remain open for inspection to members during the meeting.[276] However, where there was a default in complying with the above provision, every director or other officer of the company who is in default shall be guilty of an offence and punishable with fine up to ₦50.00 (less than RM1.00) fine for every day as the default continues.[277]

2.4.1.4 Annual General Meeting

AGMs were replicate of attempts to put local democracy into practice, sometime in the twelfth century.[278] In the Britain for example, the rural community has AGM every year, which give members of the community an opportunity to elect top officials of a local community.[279] Even as at that time, AGMs were plagued by many challenges that persist in our corporate governance today. These include member's apathy and lack of willingness to participate except where a member had a specific interest to protect, among other challenges.[280] As time goes, the AGMs that peculiar to local government administration and land ownership were incorporated into business activities under the first joint-stock corporations.[281] In an attempt to facilitate a regular meeting with members; the Companies Clauses Consolidation Act 1845 requires

[276] s. 211(7) CAMA 1990.
[277] s. 212 CAMA 1990.
[278] O'Donnell, C., "Origins of the Corporate Executive," 26 *Bull of the Bus. Hist. Soc'y* (1952): 55- 57.
[279] Webb, S., and Webb, B.P., "English Local Government from the Revolution to the Municipal Corporations Act: The Parish and the County," London: Longmans Green (1924); Tate, W.E., "The Parish Chest: A Study of the Records of Parochial Administration," Cambridge: The University Press (1960).
[280] C.J., Cordery, "Annual General Meeting as an Accountability Mechanism," Working Paper no.23, University of Wellington, New Zealand (2005).
[281] *Ibid.*

corporations to present a copy of balance sheet to members on a regular basis[282] and subsequently, the Joint Stock Companies Act 1844 made provision recognizing AGM.[283] However, whether AGM is compulsory has been of controversy, but in *Hoschett vs. TSI International Software Ltd,*[284] a member filed an action against the company alleging that the company had never called AGM.

AGM serves a communication mechanism that allows members to have direct access to the management of the company.[285] In other words, AGM is being held in compliance with statutory requirement and to respect the contractual agreement between members and the management as contained in the article of association.[286] AGM equally gives members the opportunity to question the management on the status of the company which includes accounts, reports of directors and exercise of voting rights, including the right to remove directors; to appoint auditors; to issue additional shares; payment of dividend and; other relevant issues affecting the company.[287] It allows member the opportunity to meet and take decisions that management has no power to do.[288] In this regard, the CAMA 1990 provides:[289]

> Every company shall in each year hold a general meeting as its annual general meeting in addition to any other meetings in that year, and shall specify the meeting as such in the notices calling it; and not more than 15 months shall elapse between the date of one annual general meeting of a company and that of the next: Provided that- (a) so long as a company

[282] Armstrong, J., and Jones, S.K., "Business Documents: Their Origins, Sources, and Uses in Historical Research," New York: Mansell Pub. (1987).
[283] Therese, fn. 132.
[284] *(1996) 683 A. 2d 43.*
[285] Shanthy Rachagan, Janine Pascoe & Anil Joshi, *Concise Principles of Company Law in Malaysia*, 2nd ed. (2010), 421.
[286] Ben Chan Chong, Philip Koh Tong Ngee & Peter SW Ling, *Chan & Koh on Malaysian Company Law, Principles & Practice*, 2nd ed. (2006) 634-635.
[287] Ben, et al., fn. 286.
[288] Christoph Van der Elst, Shareholder Rights and Shareholder Activism: The Role of the General Meeting of Shareholders, *Belgrade Law Review*, no. 3 (2012): 46.
[289] s. 211(1)(a) & (b) CAMA 1990.

> holds its first annual general meeting within 18 months of its incorporation it need not hold it in that year or in the following year; (b) except for the first annual general meeting, the Commission shall have power to extend the time within which any annual general meeting shall be held, by a period not exceeding three months.

From the above provision, it is mandatory for every company be it private or public to hold AGM. The interval between one AGM and the other should not be more than 15 months. Assuming, where a company held its AGM on 1st January 2016, the next AGM should not exceed 30th April, 2017 (which is fifteen months). Thus, where a company's AGM was held within 18 months of its incorporation; the company need not to hold another AGM in that year or the following year. In other word, a company must not hold its AGM in its first or second year of incorporation provided it is held within 18 months of incorporation.[290] For instance, a company that was incorporated on 31st July, 2015 needs not to hold its first AGM in 2015 or even 2016 but its first AGM must be held latest by 31st January, 2017.[291] However, circumstances may arise that would make it impracticable for a company to hold its AGM as required by law. In that case, the CAC may exercise its discretion to grant an extension of time for holding the meeting by a period not exceeding 3 months provided the application for extension of time is made before the due date of the AGM and there are cogent reasons to warrant for extension of time.[292] It is necessary to state that, failure to hold AGM has the following consequences:[293]

> (a) the CAC may on application of any member direct such member to call AGM or any other direction which the CAC thinks convenient in the circumstance; including the direction that such member in person or by proxy should apply to court so as to take a decision which shall be binding on all members;
> (b) and the company or any officer involved shall be guilty of an offence punishable with ₦500.00 fine.

[290] Ben, *et al*., fn. 286 at 635.
[291] *Ibid.*
[292] s. 213(2) CAMA 1990.
[293] s. 213(2) & (5) CAMA,1990.

There are basically two types of businesses that are transacted at AGM. They are the ordinary business and special business. The CAMA 1990 recognised the following as ordinary business at AGM declaration of dividend, the presentation of the financial statements, the report of directors and auditors, the election of directors to replace those retiring, the appointment and fixing of remuneration of the auditors and the appointment of the members of the audit committee. Apart from the above, any other business transacted at AGM is deemed special business.[294] The practice that AGM must only discuss ordinary business has no legal standing, in that a company may decide to discuss special business at the AGM provided a notice specifying the intention to transact special business has been sent to members.[295] The essence of making a distinction between as to the nature of business transaction at the AGM is to inform members in the notice of meeting, so that members would have an idea of what business is to be transacted at the AGM. It is sufficient where a notice mentioned that the meeting is to discuss ordinary business of the company, and presumably a member knows the ordinary business without having stated the details of such business.[296]

2.4.1.5 Extraordinary General Meeting

Every general meeting other than the statutory meeting and the AGM or any adjournment thereof is an extraordinary general meeting (EOGM). The essence of EOGM is to discuss urgent business that cannot wait until the next AGM and therefore any business transacted at EOGM is deemed special business.[297] The notice calling for

[294] s. 214 CAMA 1990.
[295] Oseheimen A. Osunbor, *The Bank Director and the Law*, 2nd ed. (Lagos, Nigeria: FICT, 2007), 61.
[296] Amupitan. fn. 248 at 208.
[297] s. 215(8) CAMA 1990.

EOGM must clearly state that the meeting is to discuss special business of the company.[298] This type of meeting may be convene by either the management (as a board),[299] or on requisition (duly signed application by members holding not less than 1/10) of the company's paid up capital to convey EOGM.[300] The meeting may also be convened by members representing not less than 1/10 of the total voting right (in case of a company without share capital).[301] In case of requisition, the management must convey EOGM after they received requisition from members. However, where the management after the expiration of 21 days of receipt of the requisition fails to convey EOGM, any member that represents more than half of the total voting right of the company may convey the meeting.[302] The company shall reimbursed members that requisitioned the meeting with the expenses they incur in convening the EOGM.[303]

2.4.1.6 Class Meeting

This type of meeting as the name implies is specifically for holders of a particular class of shares, example: preference shareholders. It may be called to discuss issues that affect the rights of that particular class of shares and therefore enable members of that meeting to propose a resolution and vote accordingly and any resolution taken is binding on all members of such class.[304] It is important to state that, the CAMA 1990 recognised this class of meeting and all provisions relating to convening and

[298]Amupitan, fn. 248 at 209.
[299] s. 215(1) CAMA 1990.
[300] s. 215(2) CAMA 1990.
[301] s. 215(2) CAMA 1990.
[302] s. 215(4) CAMA 1990.
[303] s. 215(6) CAMA 1990.
[304] Shanthy *et al*., 285 at 423.

conducting a general meeting apply to this class of meetings except where the article of the company provide otherwise.[305]

2.4.1.7 Meeting of the Board of Directors

The power vested in directors is exercisable through the board of directors which is possible through organising a meeting where all directors of the company may attend, in order to discuss matters that would improve their managerial responsibility and the prosperity of the company.[306] The board of directors regularly conducts its business through various committees,[307] in order to make maximum use director's skills and expertise.[308] It is not a legal requirement that members of the board must meet in a boardroom before a meeting was validly held, so long as it can be shown that the directors have discussed and agreed on a matter, it sufficed.[309] The board has an obligation to act in the best interest of members and the company as a whole; including safeguarding the rights of all members of the company.[310] The CAMA 1990 recognised the meeting of the board of directors which must be held within six months from the date of incorporation of a company.[311] Further discussion on the division of powers between members and board of directors would come subsequently in this chapter.

[305] s. 243 CAMA 1990.
[306] Oseheimen fn. 295 at 71.
[307] s. 64 CAMA 1990.
[308] John L. Colley, JR et al, *Corporate Governance* (USA, The McGraw-Hill MBA Series, McGraw-Hill Companies Inc: 2003), 44.
[309] *Enugu State v. Avop Plc (1995) 6 NWLR (Pt 399) 90.*
[310] Kiser D. Barnes, *Cases and Materials on Nigerian Company Law*, (Ile Ife, Nigeria: Obafemi Awolowo University Press Ltd, 2007), 345.
[311] s. 263(1) CAMA 1990.

2.4.1.8 Court Ordered Meeting

This is another type of meeting recognised under CAMA 1990. The procedure for court ordered meeting would be discussed in chapter four (in relation to member's remedies). Court ordered meeting is a meeting convene on order of a court and such order is normally given where it appears "impracticable" for a company or its board of directors to call meeting in the manner prescribed by the CAMA 1990 or as prescribed in the article of association.[312] The court in such instance may either on its own motion or on the application of any director of the company or of any member entitled to vote at the meeting give an order for calling a meeting as well 'ancillary or consequential directions' as the court thinks expedient in the circumstance.[313] The court may direct that that one member present in person or by proxy (for company meetings) or one director (for board meetings) may apply to the court to take a decision which shall bind all other members.[314]

2.4.1.9 Separation of Powers Between Board of Directors and Members

The power of taking a decision on a company generally lies with members of a company at the general meeting and the board of directors.[315] However, this is mainly attributable to a private company where members of the company are equally the directors of the company.[316] As for big public companies, it is difficult for all members to participate in running the affairs of the company hence the responsibility is vested

[312] *Okeowo v. Migliore (1979) 11 SC 138.*
[313] s. 223 CAMA 1990.
[314] s. 223 CAMA 1990.
[315] Dent, George W., "Corporate Governance without Shareholders: A Cautionary Lesson from Non-Profit Organizations," *Delaware Journal of Corporate Law* (2014): 39.
[316] Dorothy, fn. 22.

on the management as a board in order to achieve a meaningful result.[317] The authority to control a company is divided between the board of directors and members in general meetings. In the case of *Trenco (Nigeria) Ltd v African Real Estate Ltd*[318] the Supreme Court of Nigeria in the lead judgement by Aniagolu JSC held:

> A corporation is an abstraction. It has no mind of its own any more than it has a body of its own; its active and directing would must consequently be sought in the person of somebody who for some purpose may be called an agent of but who really is the directing mind and would of the corporation.

The above decision makes it clear that company as an artificial person must act through a natural person (director) who directs and manages the affairs of the company.[319] Companies should try as much as possible to improve communication between members and the management, as that would give much room for participation from members; give them a chance to challenge activities of the management[320] and benefit members at the end.[321] The management is accountable to members because they are the only stakeholders in a company with enforceable rights and have a direct influence on the management of a company.[322] In this regard, the CAMA 1990 provides that:[323]

> A company shall act through its members in general meeting or its board of directors or through officers or agents, appointed by, or under authority derived from, the members in general meeting or the board of directors.

[317] Richard M. Buxbaum, The Internal Division of Powers in Corporate Governance, *California Law Review* 73, 6 (Dec.,1985): 1671-1734.
[318] *(1978) 1 LRN 146 at 153.*
[319] *Delta Steel (Nigeria) Ltd v. American Computer Technology Inc (1999) 4 NWLR (Pt 597) 53 at 66.*
[320] Lisa M. Fairfax, Mandating Board-Shareholder Engagement, *U. Ill. L. Rev* (2013): 821.
[321] Cohn, J. B., Gillan, S. L. & Hartzell, J. C., On Enhancing Shareholder Control: A (Dodd-) Frank Assessment of Proxy Access. *Journal of Finance* 71, (2016): 1623–1668.
[322] Strine, Leo E., Making it Easier for Directors to 'Do the Right Thing'? *Harvard Business Law Review* 4, (2014): 235.
[323] s. 63(1) CAMA 1990.

The above provision shall be guided by the company's article of association[324] and the responsibility to manage the affairs of a company shall be on the board of directors, except where there is an agreement to the contrary.[325] On the one hand, the CAMA 1990 recognised that the membership of a company and the management shall not, in any case, be reduced below the minimum of two members; this is to enable a company take an appropriate decision when the need arises through the medium of meeting.[326] Generally, the management while exercising its powers given by CAMA 1990 and company's article of association is not bound by any instruction given by members, even at the general meeting. However, in order for the management not to obey an instruction from members; the management must act in "good faith and with due diligence"[327] and there shall be no provision to the contrary in the article of association. There is an argument that although members have the right to appoint directors, the directors are not, however, agents of members, but they are agents of the company. In *Marshall Valve Gear Co Ltd. v. Manning Wardle Ltd*[328] the court held that the article regulates the powers of directors. Accordingly, the majority shareholders at a general meeting have a right to control the action of the directors as long they comply with the article which binds the company.

The above decision shows that members have control over the directors since they reserved the right to alter the article where necessary. Under the CAMA 1990 members of a company may act in place of the management in the following circumstances:[329]

[324] s. 63(2) CAMA 1990.
[325] s. 63(3) CAMA 1990.
[326] Agom, A. R., Company Meetings and Corporate Governance in Nigeria (LL.M Thesis, Faculty of Law, Ahmadu Bello University Zaria, 1999), 45.
[327] s. 63(4) CAMA 1990.
[328] *(1909) inc 26.*
[329] s. 63(5)(a)-(d) CAMA 1990.

> Act in any matter if the members of the board of directors are disqualified or are unable to act because of a deadlock on the board or otherwise; institute legal proceedings in the name and on behalf of the company, if the board of directors refuse or neglect to do so; ratify or confirm any action taken by the board of directors; or make recommendations to the board of directors regarding action to be taken by the board.

The company's constitution plays vital role in the management of company affairs. Memorandum of association governs the external affairs of a company while the article of association regulates the internal affairs of a company. In *Edokpolo & Co Ltd v Sem Edo Wire Ind. Ltd. & Anor*[330] the Supreme Court of Nigeria held that, the court cannot hinder with the internal affairs of the company by directors particularly where they acted within their powers. This is in recognition of the corporate theory or principle of corporate personality. Despite the argument for independence of the board, empirical evidence reveals that there is no direct link between independence of the board and its value returns, though it may influence corporate decisions.[331] Therefore, member's participation at the AGM is the best way to check the activities of the board.

2.4.2 Investment and Securities Act 2007

The Investment and Securities Act 2007 (ISA 2007) is the primary law that regulates capital market in Nigeria. This law seeks to protect and maintain investor confidence in the Nigerian capital market through fair and transparent measures.[332] The ISA 2007 equally established the "Investments and Securities Tribunal (IST)"[333] as a specialised

[330] *(1984) LPELR-1017 S.C.*
[331] Lucian A. Bebchuk and Michael S. Weisbach, "The State of Corporate Governance Research," *Review of Financial Studies* 23, no. 3 (2010).
[332] Akintola Omigbodun "Nigerian Securities Industry and the 2015 National Elections (3)," (February 18, 2015).http://www.vanguardngr.com/2015/02/nigerian-securities-industry-2015-national-elections-3/
[333] s. 274 ISA 2007.

tribunal to entertain matters relating to the capital market.[334] Any complaint shall first be lodged with the NSE and SEC. Where it is not settled or where parties are not satisfied then it could be referred to IST by way of appeal. Shareholders can lodge their complaint regarding violation of their right to the SEC which was established by the ISA, 2007.

2.4.3 Code of Corporate Governance for Public Companies in Nigeria 2011 (CCGPCN 2011)

The CCGPCN 2011 is the current code on Nigerian public listed companies which came into effect in 2011 following the need for better compliance with principles of corporate governance as contained in the CCGPCN 2003.[335] This is hoped to improve Nigerian corporate governance and to observe international best practices, through transparency and accountability. Although CCGPCN 2011 applies to public companies, private companies are also encouraged to adopt the principles in their dealings. It is worthy to mention that there are other codes of corporate governance in Nigeria that are sector specific like the Code of Corporate Governance for the Insurance Industry in Nigeria (2009), Code of Corporate Governance for Banks and Discount Houses in Nigeria (2014) among others. These codes have made various provisions regarding members participation at meeting which shall be referred to in this study. At the moment, there is National Code of Corporate Governance 2016 which was issued in three parts, but the Code of Corporate Governance for Private Sector is the relevant code regulating companies. This code however takes precedence

[334] s. 284 ISA 2007.
[335] http://www.sec.gov.ng/

over the CCGPCN 2011 however, does not affect the power of the regulators to make new code or improve the existing code.

2.5 Institutional Framework for Corporation in Nigeria

This sub heading seeks to highlight on the relevant institutional/ regulatory bodies in Nigeria that are responsible for regulating companies in Nigeria. Although, the institutions were not specifically established to regulate company meetings, but they have some functions in one way or the other pertaining to company meetings.

2.5.1 The Corporate Affairs Commission

Before the establishment of the Corporate Affairs Commission (CAC), the responsibility of regulating and administration of companies in Nigeria was carried on by the Registrar of companies in the corporate affairs division of the ministry of trade.[336] During that period, the ministry of trade and the ministry of justice were jointly responsible for staffing and organising the division as one of the revenue generating divisions of the federal government. Despite generating revenue to the government, the division continues to suffer series of shortcomings ranging from inadequate facilities to carry out its functions and lack of fund. These were amongst the reasons that prompted for a law reform in 1987 by the Law Reform Commission which suggested the need to have an independent body to regulate company activities in Nigeria. The suggestion of the Law Reform Commission borrowed some practices prevalent in other jurisdictions, notably England and India and finally recommends for the establishment of the current CAC in Nigeria.

[336] Meshack N., Umenweke, "Powers and Duties of the Corporate Affairs Commission as a Regulatory Body in Nigeria," *Nnamdi Azikiwe University Journal of International Law and Jurisprudence*, 2 (2011): 15. http://www.ajol.info/index.php/naujilj/article/view/82382 (accessed April 25, 2016).

The CAC was established by section 1 of the CAMA 1990. It is one of the regulatory bodies in Nigeria charged with the responsibility to regulate and supervise the incorporation, running and winding up of companies among other things.[337] The Registrar of Companies at the CAC has the responsibility to monitor compliance with the requirements of CAMA 1990 and penalties specified for breach of any provision by companies or its officers. The CAC is empowered by section 7(c) of the CAMA 1990 to "arrange or conduct an investigation into the affairs of any company where the interests of the shareholders and the public so demand." The CAC is able to provide information to interested person about any company on request, through its "Wide Area Network System." This aims to increase public confidence and trust in the business community and protects creditors, shareholders, and other stakeholders. The Nigerian Court of Appeal[338] affirmed the powers of the CAC and held that a court cannot interfere with the powers of the commission except where such powers were not properly exercised or were exercised illegally without due regard to the circumstance of a particular case. This is to sanction the powers of CAC in discharging its functions.

2.5.2 The Securities and Exchange Commission

The history of the Nigerian Securities and Exchange Commission (SEC) is traced to the year 1962 when an ad hoc consultative and advisory body, known as the Capital Issues Committee, was established under the auspices of the Central Bank of Nigeria.[339] The Committee was mandated to examine various applications from companies seeking to raise capital from the market and make appropriate

[337] Meshack, fn. 336.
[338] *(2005) LPELR-5522 CA.*
[339] http://www.sec.gov.ng/index.php/faq/faq/action/type/faqtypeId/11/theCat/servicom/theParentId/javascript/templates/Modern/styles/news/2012/02/29/images/our-history.html (accessed March, 2016).

recommendations, particularly about time of issue to ensure the sanctity of the market.[340] Due to economic expansion and the promulgation of the Nigerian Enterprises Promotion Decree in 1972, it became imperative to establish a body, with legal backing to regulate capital market activities. This resulted to the establishment of the Capital Issues Commission (CIC) to regulate the activities of the Capital Issues Committee. The Commission was established with the promulgation of the Capital Issues Commission Decree in March 1973.[341] To meet up with challenges, the powers of the CIC were reviewed, and Financial System Review Committee was set up by the Federal Government to review capital market activities and offer ways of enhancing the market. The recommendations of the Committee led to the establishment of the Securities and Exchange Commission (SEC).[342]

After about nine years of its establishment, the enabling law, Decree No. 7 of 1979 was re-enacted as Securities and Exchange Commission Decree No. 29 of 1988 with additional provisions to help the commission in discharging its functions effectively. Similarly, in the commissions' effort to ensure investor protection, the capital market was reviewed in 1996 that led to the enactment of a new Act known as "The Investment and Securities Act No. 45 of 1999," which repealed the Securities Commission Act of 1998. The Investment and Securities Act (ISA) was later reviewed, amended and passed into law in 2007, which is the current law through which SEC derives its legal existence. It is important to state that the SEC is a member of the International Organisation of Securities Commissions (IOSCO), effective from June 1985. The SEC

[340] http://www.sec.gov.ng/index.php/faq/faq/action/type/faqtypeId/11/theCat/servicom/theParentId/javascript/templates/Modern/styles/news/2012/02/29/images/our-history.html (accessed March, 2016).
[341] http://www.sec.gov.ng/index.php/faq/faq/action/type/faqtypeId/11/theCat/servicom/theParentId/javascript/templates/Modern/styles/news/2012/02/29/images/our-history.html (accessed March, 2016).
[342] Securities and Exchange Commission Decree No. 71 of 1979 to supersede the Capital Issues Commission in 1979 and started operations on (January 1, 1980).

is the apex regulatory body for Nigeria's capital market, which operates under the supervision of the Federal Ministry of Finance.[343] Its functions are basically provided under the Act.[344] These include

(a) market regulation;
(b) inspection;
(c) surveillance;
(d) investigation regarding breaches of the laws and regulations;
(e) enforcement measures against erring market operators;
(f) making rules where necessary;
(g) market development. The SEC engages in investor education campaigns.[345]

In the Nigerian case of *Oni v. Administrative Proceedings Committee of Securities & Exchange Commission & Anor*.[346] The court held that public listed companies are part of the securities industry and under regulation of SEC. By section 13(bb) ISA 2007 the SEC has powers to disqualify any person which it considered unfit from being employed in any arm of the securities industry including any person appointed to occupy the position of a director in a public company. It has implied powers to regulate the activities of companies and ensure compliance with relevant statutes. The powers of the SEC were given to ensure integrity in the capital market as well as protection of investors (shareholders).[347]

[343] http://www.smartnigerianinvestor.com/basic-investing/stocks/securities-and-exchange-commission-sec.html (accessed March 26, 2016).
[344] s. 13 (a) –(z) ISA 2007. http://www.sec.gov.ng/ (accessed April 20, 2016).
[345] The Pivotal Role of the Nigerian Capital market in the Transformation Agenda, http://www.sec.gov.ng/news/2012/11/29/speech-the-pivotal-role-of-the-nigerian-capital-markets-in-the-transformation-agenda-for-the-nigerian-economy---arunmah-oteh-dg-sec.html (accessed April 20, 2016).
[346] *(2013) LPELR-20795(CA).*
[347] *SEC v. Oni & Lasebikan (2008) LPELR-4937(CA).*

Corporate governance and capital markets are so interrelated to each other. It is believed that stock markets directly contribute to the development of corporate governance due standard procedure laid down for listing of companies; disclosure requirement and transparency; monitoring policy and compliance standards while corporate governance improves the integrity of the capital market and attracts investors.[348] Moreover, international best practice now emphasis on protection of member's rights, transparency and disclosure as well as the competent board of directors and other stakeholders that are recognised and supported by legal provisions and enforcement mechanisms. Good corporate governance in relation to capital market can be seen through enhancement of investor trust, attracting foreign investment, as well as exhibiting country's commitment to comply with international standards. Good corporate governance has the effect to influence sustainable development of an entire economy through increasing access to global capita while poor corporate governance weakens a company's potential and may lead to financial crisis.[349]

2.5.3 The Nigerian Stock Exchange

The Nigerian Stock Exchange (NSE) was established in the year 1960 bearing the name 'Lagos Stock Exchange.' It was registered as a company limited by guarantee, licensed under ISA 2007 and regulated by the SEC.[350] Its early operations began with about nineteen listed companies. It engages in various trading activities.[351] It is committed to promoting just and equitable principles of trade and sound business

[348]Mounir Gwarzo (Director General, SEC Nigeria), Corporate Governance and Stock Market Development being a Seminar Presentation delivered at Bayero University Kano, Nigeria, Tuesday 17th November, 2015. http://sec.gov.ng/wp-content/uploads/ (accessed April 26, 2016).
[349] *Ibid.*
[350] http://www.nse.com.ng/aboutus-site/about-the-nse/corporate-overview (accessed May 6, 2016).
[351] http://www.nse.com.ng/aboutus-site/about-the-nse/corporate-overview (accessed May 6, 2016).

practices in the Nigerian capital market through strict enforcement of listing requirements that conform with international best practices. This is aimed to ensure fair and orderly market, as well as investor protection.[352] The NSE is committed to strict enforcement of its rules to maintain investor confidence in the market.[353] The NSE believes that corporate governance is essential in achieving its vision of providing investors with reliable and transparent capital market, to ensure the highest level of business conduct in all its dealings. In this regard, the NSE adopts best practices with respect to corporate governance and encourages all other listed companies to adopt same.[354] As part of its commitment to this, NSE has been a member of various international and regional organisations that promote best practices. This includes The International Organization of Securities Commissions (IOSCO); the World Federation of Exchanges (WFE); Sustainable Stock Exchanges (SSE) Initiative; Financial Information Services Division (FISD); and founding member of the African Securities Exchanges Association (ASEA).[355]

2.5.4 The Nigerian Communications Commission

The Nigerian Communications Commission (NCC) was established by the Nigerian Communications Act 2003 (NCA 2003)[356] as a sovereign body responsible for regulating Nigeria's telecommunications sector. It seeks to ensure better and efficient service delivery in the Nigerian telecommunication sector. One of its major targets now is to enhance the use of ICT in various sectors of the Nigerian economy. This can be seen through multiple initiatives aims at accelerating the use of information and

[352] www.nse.com.ng (accessed April 13, 2016).
[353] http://www.nse.com.ng/regulation (accessed May 6, 2016).
[354] http://www.nse.com.ng/about-us/corporate-governance/corporate-governance-overview (accessed May 6, 2016).
[355] http://www.nse.com.ng/aboutus-site/about-the-nse/corporate-overview (accessed May 6, 2016).
[356] s. 3(1) NCA 2003.

communication technology (ICT) facilities which includes: State Accelerated Broadband Initiative (SABI) and Wire Nigeria Project (WIN). The NCC has prescribed licensing and regulatory framework that helps it in discharging its mandate.[357] NCC has wide of functions, including supervising the activities of all service providers in Nigeria that involves internet providers[358] and management of electronic addresses.[359] The NCC also ensures access to internet services is given to subscribers subject to certain restrictions as may be prescribed.[360] This regulatory body is, however, sector specific, in that it regulates companies in the communication sector and it is relevant to the study as it relates to use of ICT in corporate meetings since it regulate the activities of internet service providers in Nigeria.

2.6 Conclusion

The various philosophies/theories discussed in this chapter is not all-inclusive in the sense that the researcher only tries to discuss on theories that appears to support member's participation at company meetings. Making inference from these theories, one can argue that several provisions of the CAMA 1990 as well as decided in Nigeria recognised one or more of the theories. This would serve as a foundation for discussion in this study. Various theories including corporate personality; agency; contract; shareholder primacy; and corporate governance were discussed in this chapter. All these theories have some relevance to member's participation at the AGM.

[357] http://www.ncc.gov.ng/index.php?option=com_content&view=category&id=63&Itemid=64
[358] http://www.ncc.gov.ng/index.php?option=com_content&view=category&layout=blog&id=140&Itemid=229
[359] s.4 NCA 2003.
[360] s. 101 NCA 2003.

On the one hand, the nature of Nigerian legal system is one that can best be described as 'British based' because most of the Nigerian laws in including the CAMA 1990 derived their origin from British law. This in essence shows that the choice of United Kingdom Companies Act 2006 for comparative reference in this study is in order.

This chapter indicates that there is no specific legislation or code of corporate governance in Nigeria that is only devoted to regulates meeting. Regulation of meeting, right of members to participate at the meeting as well their remedies are mainly contained in specific chapters of the CAMA 1990; rules or code of corporate governance. On the one hand, the CAC, SEC and NSE are the institutions that regulate companies generally in Nigeria while the Federal High Court of Nigeria is the court with exclusive jurisdiction on the administration of CAMA 1990.[361] The chapter equally states various types of meetings under CAMA 1990 particularly AGM, with its historical antecedent as a best forum for members to meet and deliberate about the company. This gives a clear background of meetings in Nigeria as well as the separation of powers between corporate organs. Finally, the chapter indicates that the importance of article of association as a contractual document that is binding on members and the company. Section 33 CAMA 1990 recognised this and as well as various decided cases. The next chapter would focus on the right of members to receive notice of AGM.

[361] s. 251 Constitution of the Federal Republic of Nigeria, 1999 (as amended).

CHAPTER THREE

LAWS REGULATING NOTICE OF ANNUAL GENERAL MEETING

3.0 Introduction

This chapter would focus on proceedings at the annual general meeting (AGM) with emphasis on notice of meeting and member's voting right. The chapter adopts doctrinal research methodology and would, therefore, refer to various legal provisions, rules, and regulations as well as other relevant code of corporate governance. On the one hand, this chapter would contain comparative discussion between the laws in Nigeria and Malaysia respectively. Subsequently, the chapter contains an analysis of interview to appreciate various views from the respondents. The discussion in this chapter attempts to answer research question one, that is, to what extent the laws in Nigeria can improve member's participation in the AGM through proper service of notice of AGM? This is to achieve research objective one, which is to analyse legal provisions relating to notice of AGM of a company in Nigeria.

3.1 Proceedings at the Annual General Meeting

It is a general principle of law governing member's meeting that any resolution taken by the majority of members having the right to vote in person or by proxy shall be binding on all members, whether a member was present at the meeting or not.[362] However, for such a meeting to be validly convened, it must be established that proper notice of the meeting specifying the date, time and the place as well as details of the

[362] Derek French, Stephen W. Mayson and Christopher L. Ryan, *Company Law* (England: Oxford University Press, 2015-2016), 391.

business to be transacted at the meeting has been duly served on every member entitled to attend the meeting. Service of the notice would enable a member to decide whether to participate at the meeting.[363]

In this regard, the Code of Corporate Governance for Public Companies in Nigeria 2011 (CCGPCN 2011) requires that general meetings should be conducted in a transparent way that allows members to freely deliberate on all issues on the agenda. Members should be given sufficient time to participate and make meaningful contributions to the meetings.[364] As mentioned in chapter 2, the code of corporate governance in Nigeria is sector specific. Thus, Code of Good Corporate Governance for Insurance Industry in Nigeria 2009 (CCGIIN 2009) states that members have the right to participate in the company meetings and shall be given sufficient information on all corporate changes.[365] The management of a company shall assist members to effectively exercise their rights through effective communication to members[366] as well as encouraging their participation in the AGM.[367] In the same context, the CCGPCN 2011 requires management of a company to ensure effective communication between members and the company,[368] which is possible through notice.

To sanction member's right of participation at the AGM, the Rules and Regulations of the Nigerian Stock Exchange, 2015 (RRNSE 2015) requires that a draft copy of the notice of meeting, circulars, annual report, audited account shall be sent to the Nigerian

[363] Derek *et al.*, fn. 362.
[364] Rule 21.3 CCGPCN 2011.
[365] Principle 5.08(ii) CCGIIN 2009.
[366] Principle 5.08(vii)(a) CCGIIN 2009.
[367] Principle 5.08(vii)(b) CCGIIN 2009.
[368] Principle 3(g) CCGPCN 2011.

Stock Exchange (NSE) for review. Similarly, any other accompanying document shall equally be sent to the NSE before such documents should be served on the members.[369] The management should ensure that both the statutory and general rights of members are well protected. Similarly, the recent Malaysian Code on Corporate Governance 2017 (MCCG 2017) states that the management should engage shareholders to participate at general meetings through service of notice of at least 28 days before the AGM.[370] Proper communication between the management and members would bring about trust and would give room for members to understand the performance of the company as well as to exercise their rights[371] specified by the relevant law. It is logical to say that, service of notice of meeting is a condition precedent to member's participation in the AGM and therefore, detail discussion on notice of meeting shall be made.

3.2 Notice of Meeting

The essence of serving notice of meeting to members is to give them an actual picture of what is expected to be the business at the meeting. It sufficed to mention that the meeting is to consider the ordinary business of the company.[372] However, where a company proposed to pass a special resolution at the meeting, the notice must clearly specify that a special resolution is to be pass at the meeting and the company must restrict itself to the business mentioned in the notice.[373] According to Respondent 3:[374]

> Notice is a fundamental requirement for attendance at AGM, without the notice, you won't be able to attend and exercise your powers or right as a shareholder. Notice is a very fundamental, very critical aspect or right of a

[369] Rule 19.6(a) Rules and Regulations of the Nigerian Stock Exchange 2015.
[370] Principle C: Integrity in Corporate Reporting and Meaningful Relationship with Stakeholder; Practice 12.1 MCCG 2017.
[371] Principle C: Conduct of General Meetings II: MCCG 2017.
[372] Y. H Bhadmus, *Bhadmus on Corporate Law Practice* (Nigeria: Chenglo Limited, 2009), 269.
[373] *Re-Moorgate Merchantile Holdings Ltd (1980) 1 WLR 277.*
[374] R3 (Lecturer), interviewed by researcher, Kano, Nigeria, October 26, 2016

> shareholder. From my understanding, most of the powers of the shareholders are exercise at the AGM and therefore, the financials and all the statutory documents that are to be tabled and discuss at AGM most as a matter of law accompany the notice of meeting. This is to enable all the shareholders to understand what transpired over the financial year.

The right to receive notice of meeting is a statutory requirement which must be complied with.[375] In the English case of *Young v. Ladies Imperial Club*[376], the court held that failure to serve a member that is entitled to receive notice of meeting has the effect of invalidating all proceedings at the meeting. In a similar decision, the court in the Nigerian case of *Onwuka v. Tayamani & Ors*,[377] held that notice of meeting must be served to all members entitled to receive and failure to serve them has the effect of invalidating the meeting.

Thus, a member must be served with the notice irrespective of the fact that such a member has expressed his intention to the company that he need not be served with notice of meeting.[378] This explains the importance attached to service of the notice. However, where it appears impracticable to serve a member or where such a member is in critical health condition, the right of such member to receive notice may be waived.[379] Similarly, where all members of a company meet and resolved on an issue, there is no need to comply with the requirement of a valid notice.[380] The above were some of the exceptions where service notice may be waived. In the Malaysian case of *Phuar Kong Seng v. Lim Hua*,[381] Zaleha Zahari J. held that notice of 14 days shall be given to the defendant even though he has earlier refused to attend the meeting. The

[375] Amupitan, Joash, O., *Corporate Governance, Models and Principles* (Abuja Nigeria: Hilltop Publishers, 2006), 220.
[376] *(1920) 2 KB 523.*
[377] *(1965) NCLR 203.*
[378] *(1920) 2 KB 523; Speechley and Others v. Alott and Others (2014) EWCA Civ 230.*
[379] *Young v. Ladies Imperial Club (1920) 2 KB 523.*
[380] *Re-Oxted Motor Co. (1921) 3 KB 32.*
[381] *(2005) 2 MLJ 338 at 343.*

court insisted on serving the defendant on the fact that the company only has two members and that failure to attend by the defendant could result in a deadlock. All the above discussion clearly explained the importance of notice of meeting.

3.2.1 Who is Entitled to Receive Notice of Meeting?

Various persons are legally entitled to receive notice of member's meeting. In this regard, the CAMA 1990[382] provides every member; every person that becomes entitled to shares as a legal representative; receiver or trustee, every director, auditor and secretary are entitled to receive notices of general meetings. Based on the above provision, various persons were legally entitled to receive notice of meeting. The right of a member to receive notice include his legal representatives. However, in *Allen v. Gold Reefs of West Africa*,[383] the court held that legal representative of a deceased member is not legally entitled to receive notice of meeting except where his name is registered in the register of members. However, in the Nigerian case of *Sparks Electric Nig. Ltd v. Ponmile*,[384] Nnaemeka-Agu J.C.A as he then was held that, before a person become entitled to any right, including the right to receive notice, he must prove cumulatively (at the same time) that he has taken some shares in a company. Furthermore, his name has to be registered in the register of members. This clearly explains that the right of a member or his legal representative to receive notice of meeting is subject to having his name registered in the register of members otherwise he is not entitled to receive the notice. In the Malaysian case of *Aik Ming (M) Sdn Bhd v. Chang Ching Chuen*,[385] some members of the board were not served with notice of meeting. Gopal Sri Ram JCA held that "It could not be said that the attendance of the

[382] s. 219 (1), (a)-(e); 219(2) CAMA 1990.
[383] *(1900) 1 Ch 656, 670.*
[384] *Suit No. CA/L/196/84; (1986) 2 NWLR (Pt. 23) 516 at 523.*
[385] *(1995) 2 MLJ 59 at 61.*

plaintiffs at the meeting would make no difference," because they were the majority before the instant meeting and their presence would have made a material difference. The court further held that, unless there is provision to the contrary in the article, the meeting is not valid except reasonable notice of the meeting and the agenda has been served.

On the one hand, the CA 2016[386] outlined certain of category of persons that are legally entitled to receive notice of meeting. They are every member of the company (including those that were entitled to the shares as a result of death ot bankruptcy of a member; directors; auditors. It is clear that they all recognised the right of a member to receive notice of meeting, which is the main focus of this study. Similarly, both the CAMA 1990 and the CA 2016 recogised the right of directors and auditors to receive notice of meeting. On the one hand, it could be seen that the CAMA 1990 expressly recognised the company secretary as legally entitled to receive notice of meeting under section 219(1)(e) CAMA 1990. However, there is no express provision under CA 2016 the right of a company secretary to receive notice of meeting. Perhaps it is logical to say that the company secretary in many cases is responsible for serving the notice of meeting. The CAMA 1990[387] clearly stipulates that no any other person shall be entitled to receive notice other than those explicitly mentioned under section 219(1)(a)-(e) & section 363(1) of the CAMA 1990. Although, the Companies Regulation, 2012 (CR) requires that the Corporate Affairs Commission (CAC) shall be notified of any AGM of companies.[388] This requirement seems to be in contrast

[386] s. 321(1) CA 2016; s. 321(1) CA 2016 see also *Indian Corridor Sdn Bhd & Anor v. Golden Plus Holdings Bhd (2008) 3 MLJ 653 at 660*.
[387] s. 219(2) CAMA 1990.
[388] Rule 76(2) Companies Regulation 2012.

with section 219(2) CAMA 1990, that made provision on person entitled to receive the notice.

The court in *Re- Mackenzie and Co Ltd*[389] held that it is arguable whether every member of a company, including those without voting right, must receive notice of meeting. In a different case,[390] it was held that only a member of a company that has voting right would receive notice of meeting. This decision may not stand today because there is a prohibition against issuing of non-voting shares or shares without voting right. In this regard, the CAMA 1990 stipulates that any company that issued non-voting shares shall after the commencement of the Act carries one voting right.[391] Therefore, its hard to have members without voting right under the current corporate legislation. However, any company that fails to comply with the above requirement shall be liable to a penalty of ₦50.00 and any resolution passed at the meeting shall be void.[392] This provision seeks to protect member's voting right in a company.

3.2.2 Responsibility to Serve Notice of Meeting

It is essential to identify the person that is responsible for serving notice of meeting. This is because, a notice served by a person not legally authorised to do so, shall make the notice void and any resolution passed at the meeting is invalid.[393] However, where it appears to the court that even where notice has been served by a proper person, the resolution would have been the same, in such a situation, the court would not be willing to invalidate the meeting.[394] In this regard, the CAMA 1990 requires company to give

[389] *(1916) 2 Ch 450.*
[390] *John Shaw and Sons (Salford) Ltd v. Shaw (1935) 2 KB 11.*
[391] s. 116(1)(a) & (b) CAMA 1990.
[392] s. 116(2) CAMA 1990.
[393] *Re Hay Craft Gold Reduction and Mining Co (1990) 2 Ch 230.*
[394] *Deposit Bank Ltd v. Rider (1895) 73 LT 374; Bently Stevens v. Jones (1974) 1 WLR 638.*

notice[395] while CA 2016 provides that a "company shall notify a member."[396] In practice, it is the secretary that is responsible for serving notice of meeting.[397] In this regard, Principle A, 1.4 MCCG 2017 on board leadership and effectiveness states that company secretary is responsible for "managing processes relating to annual shareholder meeting."

3.2.3 Number of Days Within Which Notice Should be Serve

The essence of determining the length of notice is to see how the delay in receiving notice against the stipulated days could affect the validity of the notice. The CAMA 1990 in this regard requires 21 days for all types of general meetings from the date of service.[398] The above provision is not restricted to AGM but includes any general meeting of a company. The CAMA 1990 is, however, silent on whether the date of service and the date of holding AGM are excluded in the 21 days period. Similarly, the CCGPCN 2011[399] is equally silent about the date of service and the actual date of holding AGM. The CCGPCN 2011 states:

> Notices of general meetings shall be 21 days from the date on which the notice was sent out. Companies shall allow at least seven days for service of notice if sent out by post from the day the letter containing the same is posted. The notices should include copies of documents, including annual reports and audited financial statements and other information as would enable members prepare adequately for the meeting.

[395] s. 220(1) CAMA 1990.
[396] s. 320 (2) CA 2016.
[397] s. 298(1)(a) &(d) CAMA 1990 see also principle 8.4(d) CCGPCN 2011 which task on the company secretary to ensure proper communication to relevant person.
[398] s. 217(1) CAMA 1990.
[399] Rule 24 CCGPCN 2011.

Similarly, the CGCIIN, 2009 requires at least 21 days notice of AGM to be given to members.[400] However, the Code of Good Corporate Governance for Banks and Discount Houses in Nigeria, 2014 (CGCGBDHN, 2014)[401] which is sector-specific code for banks and discount houses in Nigeria is equally silent on the number of days. In fact, the CGCGBDHN, 2014 only mentioned that notice of AGM shall be given as prescribed by the CAMA 1990 (which stipulates 21 days period). However, the Securities and Exchange Commission Rules and Regulations, 2013 (SECRR 2013) went a bit further to explain that all the general meetings should be held on working days, excluding weekends and public holidays.[402] The SEC must be officially invited to the meeting through notice of not later than 21 days before the meeting.[403] Based on the above discussion, neither the CAMA 1990 nor the three codes of corporate governance CCGIIN 2009, CCGPCN 2011, CCGBDHN 2014 made provision on whether the date of service of notice and the date of actual meeting forms part of the 21days period. That would have been important to know whether management of companies complies with the requirement of period for serving notice.

However, in the English case of *Re Hector Whaling Ltd*[404] the court held that the 21 days period are referring to 21 clear days and therefore, excludes the date of service and the actual date of the AGM. The Supreme Court of Nigeria in *Oyekoya v. G.B. Ollivant Nig. Ltd.* [405] held that there must be a proper calculation of a period within which the meeting is to take place. Based on the cited authority, it is presumed that the 21 days period starts a day after the date of service and ends a day before the date of

[400] Principle 5.08(vii)(c) CCGIIN 2009.
[401] Principle 3.4.1 CCGBDHN 2014.
[402] Rule 602(1) SECRR 2013.
[403] Rule 602(2)(a) SECRR 2013.
[404] *(1936) Ch. 208.*
[405] *Suit No. 557/1966; (1969) 6 NSCC 69 at 71.*

the meeting. However, the researcher has not seen any decided case in Nigeria on the calculation of the 21 days period.

Consequently, there are exceptions under the CAMA 1990 where members may receive less than 21 days notice. That depends on whether it is an AGM or other general meeting of the company. In the case of an AGM, members may receive less than 21 days notice where all the members having the right to attend and vote at the meeting agree on shorter notice.[406] Another exception which relates to other general meeting of a company could be where the majority of members holding not less than 95% of the nominal value of shares or majority of members holding not less than 95% of total voting right in the case of a company without share capital agree on shorter notice.[407] In these two instances, notice of less than 21 days could be given to members.

In Malaysia for example, the length of notice depends on whether it is a private or public company and whether the meeting is to pass a special resolution or not. Generally, 14 days notice[408] is required in case of a private company where no special resolution is to be passed at the meeting. However, 21 days notice[409] is required in case of an AGM of a public company or longer period as may be determined by the constitution of the company. In any other circumstances, notice of 14 days[410] is required or such longer period as may be stipulated by the constitution of the company.[411] It should be stated that where there is an express provision on the number

[406] s. 217(2)(a) CAMA 1990.
[407] s. 217 (2)(b) CAMA 1990.
[408] s. 316(1) CA 2016.
[409] s. 316(2)(a) CA 2016. Principle C: 12.1 of the recent MCCG 2017 required 28 days notice to member before the AGM
[410]s. 316(2)(b) CA 2016.
[411] *Indian Corridor Sdn Bhd & Anor v. Golden Plus Holdings Bhd (2008) 3 MLJ 653 at 660* per Gopal Sri Ram JCA.

of days required to serve notice; failure to comply shall make the notice void.[412] In the Malaysian case of *First Nominee (Pte) Ltd v. New Kok Ann Realty Sdn Bhd & Anor*[413] members of the company were given notice three days shorter than the requirement under the company's article and the court held that, such notice was defective because majority of the members were prejudiced by the shorter notice. However, shorter notice of AGM may be given where all the members having the right to attend and vote at the meeting agree on that.[414] This provision is the same with the one under CAMA 1990 as both laws requires that all members must agree to receive short notice.

3.2.4 Method of Service of Notice

This relates to the procedure used in serving notice of meeting. In this regard, the CAMA 1990 provide that "Notice may be given by the company to any member either personally or by sending it by post to him or to his registered address, or if he has no registered address within Nigeria to the address, if any, supplied by him to the company for the giving of notice to him."[415] In the above section, registered address means the address given by a member to the company for the purpose of serving notice to him.[416] There are two methods of service recognised by CAMA 1990: personal and postal service. The CAMA 1990 in this regard provides:[417]

> Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and to have been effected in the case of a notice of a meeting at the expiration of seven days after the letter containing the same is posted, and in any other case at the time at which the letter would be delivered in the ordinary course of post.

[412] This was decided by Malaysian court in *SJA Bhd & Anor v. HBL Nominees (Tempatan) Sdn Bhd (2002) 7 CLJ 580 at 581*; though the decision was in respect of EOGM.
[413] *(1983) 2 MLJ 76.*
[414] s. 316(3) CA 2016.
[415] s. 220(1) CAMA 1990.
[416] s. 220(5) CAMA 1990.
[417] s. 220(2) CAMA 1990

The CAMA 1990 equally recognised the right of the joint holder of shares to receive notice of meeting. Section 220(3) CAMA 1990 provides, "Notice may be given by the company to the joint holders of a share by giving the notice to the joint holder first named in the register of members in respect of the share." In the case of service of notice on the personal representatives of a deceased or bankrupt member, the CAMA 1990[418] provides the notice is to be served by post to the address given by such personal representative in the same way it is given to the deceased or bankrupt member.

In Malaysia, the CA 2016 provides that members must be served with written notice either in a hard copy or electronic form or combination of both.[419] The section further explains on the method of delivery where it provides, except where the constitution of the company has provision to the contrary,[420] a notice given in a hard copy shall be sent to any member either personally or by post to the address supplied by the member to the company for such purpose.[421] The notice must be served in a proper manner (according to the constitution of a company), and the validity of a meeting solely rely on proper service of notice according to *Vincent NG J*.[422]

The CA 2016 clearly recognised two methods of service. These are personal service by post or electronic service. This chapter would only discuss on service of notice through hard copy/ postal delivery while discussion on service of notice through electronic form would come in chapter 5 of this study. It is seen that CA 2016

[418] s. 220(4) CAMA 1990.
[419] s. 319(1); 319(1)(a)-(c) CA 2016; similarly, Principle C: I (11.1) MCCG 2017 recommend the use of electronic medium including company websites and social media among others to communicate with members.
[420] s. 319(2) CA 2016.
[421] s. 319(2)(a) CA 2016.
[422] *Mahesan & Ors v. Ponnusamy & Ors (1994) 3 MLJ 312; Jerry Ngiam Swee Beng v. Abdul Rahman bin Mohd Rashid & Anor (2003) 6 MLJ 448 at 450.*

apparently made provision for service of notice through electronic means. However, there is no corresponding provision under CAMA 1990 despite the inefficiency of the postal delivery service in Nigeria. In this regard, Respondent 2 states "It is an understatement to talk about the inefficiency of the postal service in the country. This is a problem because it takes a longer period, time or duration between postage and receipt of notices of AGM."[423] Details from the excerpt of interview shall reflect later in this chapter.

3.2.5 Contents of Notice of Meeting

In *Jenashare Pty Ltd v. Lemrib Pty Ltd*,[424] the court held that notice of meeting must contain sufficient description of the business to be transacted at the meeting, to give members a real picture of the events and to decide on whether to attend or not. Consequently, business transacted at the meeting should correspond with the content of the notice else any resolution passed at the meeting remained ineffective.[425] A notice that is not open and clear is not a good notice. Thus, where a notice of meeting fails to disclose the necessary or sufficient details, such failure has the effect of invalidating the meeting, as well as any resolution passed at the meeting.[426] On the one hand, notice of meeting must be specific;[427] it must not be conditional (to say the meeting would only take place on the happening of an event). Once a notice of meeting is sent to members, there shall be no postponement or cancellation of the meeting or any resolution proposed in the notice. However, where due to unforeseen circumstances

[423] R2 (Lecturer), interviewed by researcher, FCT Abuja, Nigeria, October 27, 2016.
[424] *(1993) 11 ACSR 34.*
[425] *Re Teede and Bishop Ltd (1901) 70 LJ Ch 409.*
[426] *Pacific Coast Coal Miners Ltd v. Arbuthnot (1917) AC 607, 618.*
[427] *Alexander v. Simpson (1889) 43 Ch D 139.*

the meeting could not take place, then the company must make an announcement in at least two national dailies stating the reason(s) why the meeting shall not hold. The announcement must be done at least three business days or shorter period as the NSE may approve.[428] Another exception for postponement or cancellation of meeting could be where the company's article contains a provision to that effect.[429]

In the case of *Baillie v. Oriental Telephone and Electric Co Ltd*,[430] the court held that notice would not be sufficient unless where it enables members to know what they are going to vote at a meeting. In the same regard, Templeman J. in *Rackham v. Pekk Foods Ltd*[431] was of the view that, directors must report to shareholders and give them adequate information to enable them to decide whether to approve any resolution at the meeting or not. To this end, notice of meeting must not be misleading, and where a notice fails to state the actual purpose of the meeting, such notice and proceedings at the meeting were invalid.[432] In *Dawson International Plc v. Coats Patons Plc*[433] the court held that where directors decide to advise members of a company, they must advise them in good faith and not to deliberately mislead them. The above decisions were to the effect that notice should be an honest description of a scheduled meeting.

On the one hand, Bowen LJ in *Alexander v. Simpson*[434] was of the view that the applicable test in construing the meaning of notice should be "What is the fair business-like construction which business men in the position of shareholders would

[428] Rule 19.7(b) Rules and Regulation of the Nigerian Stock Exchange, 31st December 2015.
[429] *Smith v. Paringa Mines Ltd (1906) 2 Ch 193; Bell Resources Ltd v. Turhbridge Pty Ltd (1988) 13 ACLR 429.*
[430] *(1915) 1 Ch 503.*
[431] *(1990) BCLC 895.*
[432] *Lee Nyuk Heng v. Pembangunan Ladang Hassan Sdn Bhd (2002) MLJU684.*
[433] *(1988) SLT 854.*
[434] *(1889) 43 Ch D 139.*

place on this document when they receive it?" However, in *Deveraux Holdings Pty Ltd v. Pelsart Resources,*[435] the court held the view that the relevant issue is what "an ordinary shareholder," would understand upon seeing the notice; to see whether it has disclosed appropriate information about what would be put to vote at the meeting. On the one hand, notice of meeting needs not be too detail.[436] It would be sufficient where the notice is brief but attached with a circular that contains details of the business transaction at the meeting. Accordingly, both the notice and the circular are regarded as a single document as per as notice of meeting is concerned.[437]

In Nigeria, section 218(1) CAMA 1990 provides that notice of meeting "Shall specify the place, date and time of the meeting, and the general nature of the business to be transacted thereat in sufficient detail to enable those to whom it is given to decide whether to attend or not. Where the meeting is to consider a special resolution, shall set out the terms of the resolution."[438] Thus, where notice has been sent to members, its content cannot be changed except where a company notified and got the approval of the NSE.[439] All these were put in place to protect the interest of members so that they should not taking by surprises during AGM.

[435] *No. 2 (1985) 4 ACLC 12*.
[436] *Indian Corridor Sdn Bhd & Anor v. Golden Plus Holdings Bhd (2008) 3 MLJ 653 at 654* per Gopal Sri Ram JCA held that it is sufficient where notice mentioned that the meeting was to remove a director.
[437] *Tiessen v. Henderson (1899) 1 Ch 861 at 867;* similar view was earlier held by Kekewich J in *Young v. South African and Australian Exploration and Development Syndicate (1896) 2 Ch 268.* This view was equally applied by the Malaysian court in *Dato Mohd Tahir bin Abdul Rahim & Ors v. Sharikat Permodalan Kebangsaan Bhd & Ors (1991) 2 CLJ 1155.*
[438] Rule 19.5(b) Rules and Regulations of the Nigerian Stock Exchange 2015 which is also similar to s. 218(1) CAMA 1990.
[439] Rule 19.7(a) Rules and Regulations of the Nigerian Stock Exchange 2015.

The CAMA 1990 regarding place of meeting provides that all statutory and AGM shall be held in Nigeria,[440] within business hours[441] at a place that shall be affordable and accessible to members of the company or majority of the member.[442] The management should make sure that members are not disenfranchised from attending AGM based on place of meeting.[443] The management is equally required to facilitate attendance of members with a physical disability by providing a place of meeting that is easily accessible.[444] Additionally, AGM of a company shall not be held on public holidays as may be declared by the Federal Government of Nigeria.[445] In the case of AGM, the CAMA 1990 provides that the notice need not to state details of business to be transacted at the meeting. It is sufficient where the notice mentioned that the meeting is to transact ordinary business that involved declaration of dividends;[446] presentation of the financial statements;[447] director's and auditor's report; [448] election of directors to replaced retiring ones;[449]fixing remuneration for auditors;[450] removal of directors;[451] election of auditors;[452] and directors.[453]

The CA 2016 has similar provision with CA 2006 on the contents of notice,[454] with the addition that notice of meeting may contain some text of any proposed resolution

[440] s. 216 CAMA 1990; s. 327(2) CA 2016 stipulates that the "main venue" of meeting shall be in Malaysia and the chairman of the meting must be present at the main venue. This is based on the fact that CA 2016 recognised holding meeting in more than one venue through technological advancement.
[441] Rule 19.9(a) Rules and Regulations of the Nigerian Stock Exchange 2015.
[442] Principle 3.4.2 CCGBDHN 2014.
[443] Rule 23 CCGPCN 2011.
[444] Rule 19.9(b) Rules and Regulations of the Nigerian Stock Exchange 2015.
[445] Rule 19.10 Rules and Regulations of the Nigerian Stock Exchange 2015.
[446] s. 379(1) CAMA 1990.
[447] s. 344, 345 & 349 CAMA 1990
[448] s. 342; 359 CAMA 1990.
[449] s. 248(1) & (2) CAMA 1990.
[450] s. 361 CAMA 1990.
[451] s. 262 CAMA 1990.
[452] s. 357 CAMA 1990.
[453] s. 218(2) CAMA 1990.
[454] s. 317(1)(a) &(b), CA 2016.

as well as other relevant information as the directors deemed necessary.[455] The venue/place of meeting shall be in Malaysia,[456] and not necessarily at the state where the registered office is situated.[457]

On the one hand, where a company intends to pass a special resolution, there must be a notice of special resolution stating the intention to pass a special resolution at the meeting and such resolution adopted must be the same with the one contained in the notice of meeting, except to correct for grammatical errors.[458] In this regard, the CAMA 1990 provides, notice of intention to move special resolution shall be given to the company 28 days prior to the meeting. The company shall give such notice to members the same way with the notice of meeting, and in any case, not later than 21 days to the meeting.[459]

In Malaysia, the requirement for 28 days[460] is the same both in Nigeria and Malaysia (on special resolution). However, CAMA 1990 recognised instances where it would be impracticable to serve members in the same way as notice of meeting, but still, requires 21 days even where it is not practicable to serve the 28 days notice. The CA 2016[461] has provision for at least 14 days notice, where it is impracticable to serve members.

[455] s. 317(2) CA 2016.
[456] s. 327(2) CA 2016.
[457] *Indian Corridor Sdn Bhd & Anor v. Golden Plus Holdings Bhd (2008) 3 MLJ 653 at 654* per Gopal Sri Ram JCA.
[458] *Merchantile Holdings Ltd (1980) 1 WLR 227.*
[459] s. 236 CAMA 1990.
[460] s. 322(1) CA 2016.
[461] s. 322(4) CA 2016.

3.3 Quorum

Before discussion on the voting right, it is important to briefly highlight on quorum at the meeting due to its relevance, even though it is not the focus of this study. Quorum is the minimum number of members needed to transact a valid business at the meeting, unless where the company's article has provision to the contrary. In the famous English case of *Sharp and Dawes*,[462] Mellish LJ held that "According to the ordinary usage of the English language, a meeting could no more be constituted by one person than a meeting could have been constituted if no shareholder at all had attended. No business could be done at such meeting." In this regard, the CAMA 1990 provides that quorum for member's meeting "shall be one-third of the total number of members of the company or 25 members whichever is less present in person or by proxy.Where the number of members is not a multiple of three, then the number nearest to one-third, and where the number of members is six or less, the quorum, shall be two members."[463] In determining whether there is required quorum, both members and proxies are counted.[464] Where a member or members are present at the commencement of a meeting and later withdraw from the meeting in such a way that the chairman of the meeting formed an opinion that they lacked sufficient reason to justify their withdrawal, the chairman may direct that the meeting should continue. However, any resolution passed would be binding on all members. However, in the event where there is only one member at the meeting, he may seek direction from court to take a decision.[465] On the other hand, where members withdrawal from the meeting is

[462] *(1876) 2 Q.B.D. 26.*
[463] s. 232(2) CAMA 1990.
[464] s. 232(3) CAMA 1990.
[465] s. 232(4) CAMA 1990.

reasonably justified (according to the opinion of the chairman), the meeting should be adjourned for a week time. The adjourned meeting should be held at the same time and place and if on the adjourned date, there is no quorum, members at the meeting shall be deemed to form a quorum, and their decision binds on all other members.[466]

In *United Investment & Finance Ltd v. Tee Chin Yong*,[467] the court held that meeting conducted by one member is invalid. Similarly, any resolution passed at such meeting is invalid except where the company's article has provided to that effect. Now in Malaysia, there is provisions that recognises that a single person may form a quorum, where a company has only one member.[468] Another instance is where two members present at the meeting either in person or by proxy may form a quorum. In any other case, except where the constitution of the company requires more than two members.[469] Another distinct provision under the CA 2016 is that where there is no quorum after about half an hour beyond the scheduled time for the meeting, such meeting is dissolved where members requisitioned it[470] and in any other case, the meeting should be adjourned to a week; at the same place and time.[471] In *Tan Guan Eng v. BH Low Holdings Sdn Bhd*,[472] it was held that a valid resolution could be pass by one member or a proxy and such resolution would be binding upon other members. Similarly, a single member may constitute a meeting where a court gives direction to that effect.[473]

[466] s. 232(5) CAMA 1990.
[467] *(1967) 1 MLJ 31.*
[468] s 328(1) CA 2016.
[469] s. 328(2) CA 2016; *Neil M' Leod and Sons Ltd (1967) SC 16.*
[470] s. 328(5)(a) CA 2016.
[471] s. 328(5)(b) CA 2016.
[472] *(1992) MLJ 105.*
[473] s. 306(4) CA 2006; see *Jarvis Motors (Harrow) Ltd & Anor v. Carabott & Anor (1961) 1 WLR 1101 at 1104, see also Re London Flats Ltd (1962) MLJ 438; Iro v. Park & Ors (1972) 1 All NLR 912 at 918, 919.*

3.4 Chairman of the Meeting

The chairman of a meeting seeks to ensure that a meeting is properly conducted.[474] In *National Dwellings Society v. Sykes*,[475] Chitty J opined that "It is the duty of the chairman and his function, to preserve order, and to take care that the proceedings are properly conducted." The chairman is responsible to decides on all related questions that may arise at the meeting.[476] Accordingly, where a member is not satisfied, the burden is on such a member to establish that the decision of the chairman was wrong.[477] On the one hand, the chairman is expected to exhibit the highest level of impartiality and should act *bona fide* in the best interest of the company.[478] The chairman generally has the power to adjourn a meeting. This power may be exercised where it is practically impossible for a meeting to continue due to "unruly behavior."[479] Decision at a meeting is based on majority of votes cast. The chairman of a meeting under common law has no right to 'second or casting vote' in a situation where there is equality of votes.[480] However, the company's article may confer the right of casting vote on the chairman.

The CAMA 1990 stipulates that the chairman of the board of directors shall be the chairman/ chairperson of every general meeting of the company. However, where there is no chairman of the board or where the chairman is not present within about an

[474] s. 240(3)(b) CAMA 1990.
[475] *(1894) 3 Ch 159, 162.*
[476] *John v. Rees (1970) Ch 345, 382; Byng v. London Life Association Ltd (1989) BCLC 400*; see S. 240(3)(d) CAMA 1990 see also Rule 19.12 Rules and Regulations of the Nigerian Stock Exchange 2015.
[477] *Re-Indiana Zoedone (1884) 26 Ch D 70.*
[478] *Re- Bomac Battern Ltd and Pozhke (1984) 1 DLR (4d) 435*; see also S. 240(3)(e) CAMA 1990.
[479] *John v. Rees (1969) All ER 560, 567.*
[480] *Nell v. Longbottom (1894) 1 QB 767; Jerry Ngiam Swee Beng v. Abdul Rahman bin Mohd Rashid & Anor (2003) 6 MLJ 448 at 460.*

hour after the time fixed for the meeting; or the chairman is not woulding to act; then directors shall appoint one member of the board to be the chairman of the meeting. In Malaysia, the word 'chairperson' is used which means the same as 'chairman' who should serve as the chairman of the board.[481] Where the chairperson is not present within 15 minutes of the time fixed for meeting or unwoulding to act as chairperson, then, members may appoint any one of them to be the chairman of the meeting.[482] The right to appoint a member to be chairman of meeting is recognised under the CA 2016.[483]

3.5 Notice of Meeting from the Perspective of the Respondents

The detail background of the respondents is contained in chapter one of this study under the methods of data collection.

3.5.1 Themes and Sub-themes

The themes and sub-themes in this study were deduced based on the research question and the response gotten from the respondents. This can be seen in the table below:

Table 3.1 *The Theme and Sub Theme for Research Question One*

Research Question	Theme	Sub-themes
To what extent the laws in Nigeria can improve member's participation in the AGM through proper service of notice of AGM?	Laws relating to notice of AGM	Legal basis of right to receive notice and to participate at the meeting Service of notice by post. Serving notice along with voluminous documents.

[481] s. 329(1) CA 2016.
[482] s. 240(2) CAMA 1990.
[483] s. 329(2) CA 2016.

	Proper service. Adequacy of the notice. Publication of notice in national dailies. Other publication avenue. Place of meeting. Rotation of place of meeting. Reimbursing members. Legal problems.

3.5.2 Legal Basis of Right of Members to Receive Notice of AGM

In this regard, the interview begins with a question on the legal basis of the right of members to receive notice of AGM, from respondent's perspective. In this regard, 8 respondents were asked. Their responses centered on the following: corporate personality principle (CPP); members as the most important organ of a company (MMOC); protection of ownership right (POR), involvement in running the affairs of the company (IRAC) and knowledge of business to be transacted at the AGM (KBT). This aspect does not require much analysis since it has to do with legal basis/ background of the right to receive notice from respondent's perspective.

In other word, respondents were asked on the legal basis of the right to receive a notice to see whether they have different views about the legal basis of this right or not. However, all their responses do not suggest anything new, but mainly consolidate previous legal, judicial and other literature in the field. The subsequent subheading

would contain the excerpts and analysis of the interview. In his response, Respondent 1 explained:[484]

> *Right from the conception and the recognition of corporate personality, it was recognised that a company is an abstraction and the law recognises that it can do anything that a natural person can do, but it has to be by natural persons. That is why apart from recognising the concept of corporate personality under section 37 of CAMA, section 38 also vested the registered companies the powers of natural persons so that whatever a natural person can do is also possible for companies to do, including procreation. From this perspective, it means the moment a company is formed; certain organs are immediately put in place. One of such organs is the board of directors and the general meeting. However, for those human agents who act on behalf of the company, they must have to meet.*

In a similar view, Respondent 5 explained, "A company is a legal person. It can only operate through a biologically human being, i.e., the person who owns shares in the company so that he can participate in the decision or the direction a company would follow."[485] Respondent 3 was of the view that members are the most crucial organ in a company and they should be involved in running their investment. He explained:[486]

> *Shareholders are primary stakeholders in every company. All their powers and their rights derived largely based on their investment in a company, because they are residual owners of a company. By virtue of that, having invested in company it is only reasonable to expect that they should have a say on running of the company and that is why the law expressly recognises some number of rights or powers vested in them.*

Respondent 1 further explained about the need to hold AGM when he states:[487]

> *One of the organs through which decisions would be taken is annual general meeting. That is why in CAMA, section 216 states that there must be an AGM and that the AGM would be once in a year. The management of a company has certain responsibilities, but certain powers are exclusively given to the general meeting, like a change of name, increasing of capital, reduction of capital, conversion of the company from public to private and vice versa. That is why you need the general meeting, and there*

[484] R1 (Lecturer), interviewed by researcher, Jos, Nigeria, November 6, 2016.
[485] R5 (Lecturer), interviewed by researcher, Kano, Nigeria, October 25, 2016.
[486] R3 (Lecturer), interviewed by researcher, Kano, Nigeria, October 26, 2016.
[487] R1 (Lecturer), interviewed by researcher, Jos, Nigeria, November 6, 2016.

are businesses that can be transacted at the AGM. That is why the AGM is very crucial.

Responding to the same question, Respondent 9 has this to say:[488]

The legal basis, my understanding is the notion of the law that members are the owners of the company. Being the owners of the company, they have the right to AGM every year, and extraordinary general meetings are carried-out when the need arises. The AGM gives shareholders the feeling that they are part of the company and that they are going to be invited in everything that pertains the company. The AGM has a very strong role to play especially in matters regarding the real operations of the company and changes pertaining the company. Whatever is approved by the board at some points has to be read by the AGM.

Notice of meeting is critical to members since it gives them the opportunity to have prior knowledge of business to be transacted. In this regard, Respondent 3 explained:[489]

The notice is not only for members to come to the meeting, the notice is also designed to enable members of a company to make professional consultation on the statutory books and financials attached to the notice, so that they can make a meaningful contribution at the meeting. It is not just for them to receive the notices and attend the meetings and watch as the meeting goes. It is for them to study the financials, make critical observations and raise these critical observations at the meeting so that steps can be taken to rectify these problems observed in the notice.

In his response, Respondent 2 mentioned:[490]

I think basically the issue of notice and participation in AGM is to enable members to have an idea of the scheduled meeting so that they would attend and exercise their voting rights. If you put somebody on notice, he becomes fully aware of the meeting and he gets prepared for it. This right enables members to exercise their member's right of ownership of the company through voting and it serves as checks on the activities of the management. At the AGM, you voice out your feelings about the way and manner the management is carrying-out the business of the company. This is because AGM is the only avenue members meet to determine the

[488] R9 (Company Secretary), interviewed by researcher, FCT Abuja, Nigeria, November 14, 2016.
[489] R3 (Lecturer), interviewed by researcher, Kano, Nigeria, October 26, 2016.
[490] R2 (Lecturer), interviewed by researcher, FCT Abuja, Nigeria, October 27, 2016.

activities and prospects of their company that has been entrusted to the management.

Respondent 10 opined, "The legal basis for these rights from my understanding may not be more than two or three reasons. First, is the need for the right of shareholders to be protected. The need for the interest of the general public to be protected; and, the need for the interest of the state to be protected."[491] According to Respondent 4, the legal bases are derived from the provision of CAMA 1990. He mentioned:[492]

The legal basis of right to be given notice, to participate at AGM is provided under CAMA itself. It is a mandatory provision that every member of a company that is entitled to attend and vote at the meeting shall be given notice of AGM to enable him/her to attend the meeting, vote and participate fully at all the transactions at the meeting.

Respondent 7 on the other hand, explained about the relevance of holding AGM. He said, "Annual general meetings are meetings where everything about the company is discussed. Any major thing the management wants to do; it must be approved by the AGM. It is a very important forum for shareholders."[493] He further explained about the rational why management would not want members to participate at AGM. He said:[494]

The reason is that anybody who is not sure of what someone does, things might not straightforward. They want a small number of shareholders to attend the meeting because the more they come, the more questions they would raise and get the management into trouble. That is why they manipulate the attendance so that elections should go in the favour of the management. They sometimes sponsor those they want to attend the meeting.

[491] R10 (Company Secretary), interviewed by researcher, Kano, Nigeria, October 24, 2016.
[492] R4 (Lecturer), interviewed by researcher, Zaria, Kaduna, Nigeria, November 24, 2016.
[493] R7 (Shareholder activist), interviewed by researcher, FCT Abuja, Nigeria, October 27, 2016.
[494] R7 (Shareholder activist), interviewed by researcher, FCT Abuja, Nigeria, October 27, 2016.

3.5.3 Service of Notice of AGM

In this regard, respondents were asked about the method of service of notice based on the provision of CAMA 1990 as well as other code of corporate governance. Thus, seventeen respondents were asked on whether there is delay in receiving notice of meeting due to postal inefficiency in Nigeria (DRNPI). Their response is presented in the table below:

Table 3.2 *Delay in Receiving Notice of AGM*

Respondent	**DRNPI**
R1	Yes
R2	Yes
R3	Yes
R4	Yes
R5	No
R6	Yes
R7	Hasn't commented
R8	Yes
R9	Yes
R10	Hasn't commented
R11	Hasn't commented
R12	Yes
R13	Yes
R14	Yes
R15	Hasn't commented
R16	Hasn't commented
R17	Yes

From the above table, eleven respondents (R1, R2, R3, R4, R6, R8, R9, R12, R13, R14 & R17) out of seventeen, admits that there is delay in receiving notice of meeting, mainly due to postal inefficiency in Nigeria. This makes it difficult to comply with 21

days notice requirement under CAMA 1990; CCGPCN 2011; and the Rules and Regulation of the Nigerian Stock Exchange 2015 (RRNSE 2015). On the one hand, five respondents (R7, R10, R11, R15 & R16) did not comment on the issue of delay in receiving while only one Respondent (R5) claimed that members received notice of meeting on time.

However, some respondents state other reasons for the delay in receiving notice which includes member's inability to check their postal box regularly (MICPB); members not updating their registered addresses (MNURA); and management trying to restrict the participation of members at AGM (MRPC).

Table 3.3 *Other Reasons Delaying Service of Notice*

Respondent	MICPB	MNURA	MRPC
R1			Yes
R4			Yes
R7			Yes
R9		Yes	Yes
R10			Yes
R11	Yes	Yes	
R12	Yes	Yes	
R13		Yes	
R14	Yes	Yes	
R16	Yes		

Based on the above table, four respondents (R11, R12, R14 & R16) added that the delay in receiving notice could be due to member's inability to check their postal box regularly while five respondents (R9, R11, R12, R13 & R14) believed that the delay could be as a result of members not updating their registered addresses. Five

respondents (R1, R4, R7, R9 & R10) claimed that the delay could be due to management of a company trying to restrict participation of members at AGM. The details of responses gotten from the respondents are reported below.

Respondent 2 in this study explained the problem affecting delivery of notice of AGM when he said, "It is an understatement to talk about the inefficiency of the postal service in the country. This is a problem because it takes a longer period, time or duration between postage and receipt of notices of AGM."[495] In the same context, Respondent 13 opined, "It is true that shareholders often complain about delays in receiving notices of AGM due to poor postal delivery services in the country."[496] The same goes with Respondent 3 when he stated, "There is a general outcry particularly among the investing public that the notices almost always reached the members very late, at times even after the meeting must have taken place. That is a big challenge."[497]

Responding to the question of delay in receiving notice of meeting, Respondent 12 affirmed that:[498]

> *We receive complaints about not getting notice of meetings on time from shareholders. But it is due to the postal service we have in Nigeria. The law says we have to post the annual report and notice to shareholders three weeks (21 working days) before the AGM so that they can go through it, prepare for any questions they want to ask or anything they want to present during the AGM. Unfortunately, we as a company, we make sure that we comply with what the law says we should but in the process of delivery, that is where the problem arises. It is either a shareholder is not checking his post office box, or he has changed his address, or someone has given an incorrect address. These are some of the factors that lead to shareholders complaining of not receiving notice of AGM on time. But all those checking their boxes or*

[495] R2 (Lecturer), interviewed by researcher, FCT Abuja, Nigeria, October 27, 2016.
[496] R13 (Company Director), interviewed by researcher, Kano, Nigeria, December 9, 2016.
[497] R3 (Lecturer), interviewed by researcher, Kano, Nigeria, October 26, 2016.
[498] R12 (Company Director), interviewed by researcher, Kano, Nigeria, November 22, 2016.

those who are current on our activities get their annual reports on time and have not been complaining about this issue.

Adding his support in this regard, Respondent 9 explained:[499]

The issue of service has always been a challenge. As a legal practitioner, you'll find people cannot even serve court processes. We use substituted means and because the law has envisaged that situation like this could arise, that you should not expect a company to be able to serve every member. Already there is a problem of effective delivery.

According to Respondent 14, the problem of delay in postal service is mainly peculiar to the government owned courier service. In this regard, he has this to say:[500]

There used to be complain by some members about delay in receiving notice. This is mainly due to the fact that our postal services particularly the (government owned) is almost dead. We need to make sure that the law adopt a system that ensure fast delivery of notices. If the current postal service is to be used, then members should make sure they check their mailbox regularly and pay the maintenance fee. This is because at times it is not that notices are not sent, it is the problem of members not checking the mailbox regularly. They must, as a matter of fact, try to update the company in case of change of addresses.

Respondent 2 equally was of the view that government courier service is not effective in delivering notice of AGM. He said:[501]

The government courier service is not well equipped compared to what is obtainable in places like Malaysia because I had experience in the two jurisdictions. So, delivering messages in time is a major problem which AGM notices are no exceptions. At times notices take more than 21 days before they reach respective members. We do receive such kind of complaints. This is because of the inefficiency of the courier service. At times even, the notices get misplaced in the hands of the courier. It is, in fact, a barrier for prompt delivery of notices for AGM.

[499] R9 (Company Secretary), interviewed by researcher, FCT Abuja, Nigeria, November 14, 2016.
[500] R14 (Company Director), interviewed by researcher, Lagos, Nigeria, December 10, 2016.
[501] R2 (Lecturer), interviewed by researcher, FCT Abuja, Nigeria, October 27, 2016.

However, Respondent 2 does not believe that the problem of delay is peculiar to government courier services, he was of the view that; Even the private courier companies misplaced messages. There was a time they brought wrong documents to me."[502] In an attempt to figure out the reason for delay in receiving notice, Respondent 16 maintained, "Some shareholders could not pay their postal bills and therefore their boxes were allocated to other people who could pay their bills. These had created a lot of problems for shareholders to get notices of AGMs on time."[503]

In the same vein, Respondent 11 added, "Based on my experience, some of the members of the company either they do not have complete particulars of address. Most Nigerians do not update their postal addresses, they just obtain a postal box and after some time it becomes dormant."[504] According to Respondent 13, apart from the inefficiency of the postal service in Nigeria, there are equally some challenges. In this regard, he opined that:[505]

> *Another problem in this regard is the fact that many shareholders' postal boxes are not up to date. Some shareholders do not pay their postal box maintenance; as a result, they hardly get the notice on time. There is a need for up to date contact addresses of the shareholders. This is because many shareholders do not have specific or exact address number that they can be easily located with and shareholders need to keep the company up to date in case of change of address.*

In another view, Respondent 11 maintained, "Most members get notice days after AGM because they too do not check their mailbox on a daily basis."[506] According to him, members should be checking their postal box regularly. However, Respondent 6

[502] R2 (Lecturer), interviewed by researcher, FCT Abuja, Nigeria, October 27, 2016.
[503] R16 (Regulator), interviewed by researcher, Kano, Nigeria, November 21, 2016.
[504] R11 (Company Secretary), interviewed by researcher, FCT Abuja, Nigeria, November 13, 2016.
[505] R13 (Company Director), interviewed by researcher, Kano, Nigeria, December 9, 2016.
[506] R11 (Company Secretary), interviewed by researcher, FCT Abuja, Nigeria, November 13, 2016.

cited diverse shareholdings as one of the reasons for the delay when he mentioned, "It is true some shareholders do not get notice on time because, first of all, some companies have like 500,000 shareholders. It is a lot of work for the postal service and you end up not getting the accounts and notice at times 3 weeks after the AGM has taken place."[507] Respondent 7 argued, "The management is in charge and responsible for sending the notices, so the management is responsible for the delay."[508] In his response, Respondent 7 mentioned, "This is having wrong people in the wrong places. The management avoids expenses that is why they don't send notices to many people."[509] However, Respondent 9 believed that company secretary should take the issue of service of notice as a very serious issue. He explained:[510]

> *I feel there is a need for every company secretary to keep taps on every member of the company that is why they use postal services. Whenever you issue notice, it is pertinent to ensure that there is a column attached to it saying that in case of a change of address or personal details, you need to get back to the company. That would enable the company to have a tap on every member and would solve the problem of postal service delivery.*

According to Respondent 9, "Part of the corporate governance now is that shareholders are informed and advised to send in their new addresses immediately there is a change. This awareness was formerly not in place."[511] Respondent 1 summarised the problem affecting service of notice in the following words, "As we speak now, nobody relies on postal agencies for notices of meetings anymore."[512] Respondent 1 equally maintained that it might be deliberate that companies do not post those notices on time.[513] However, Respondent 3

[507] R6 (Shareholder activist), interviewed by researcher, Kano, Nigeria, November 21, 2016.
[508]R7 (Shareholder activist), interviewed by researcher, FCT Abuja, Nigeria, October 27, 2016.
[509] R7 (Shareholder activist), interviewed by researcher, FCT Abuja, Nigeria, October 27, 2016.
[510] R9 (Company Secretary), interviewed by researcher, FCT Abuja, Nigeria, November 14, 2016.
[511] R9 (Company Secretary), interviewed by researcher, FCT Abuja, Nigeria, November 14, 2016.
[512] R1 (Lecturer), interviewed by researcher, Jos, Nigeria, November 6, 2016.
[513] R1 (Lecturer), interviewed by researcher, Jos, Nigeria, November 6, 2016.

equally acknowledged the challenges facing service of notice through postal service but he was of the view that:[514]

> *The inefficacy of the courier service in Nigeria is changing nowadays. We are beginning to see competition in the sector and therefore when you have a competition the services tend to be effective and more efficient. Majority of the postal services in Nigeria have challenges that reflect the developmental status of the country. Until recently it has been practically dead.*

In a completely different view, Respondent 5 maintained, "My experience has always been in accordance with the CAMA which requires that notice should be given before 21 days of the AGM. I have participated in several meetings of companies and whenever they invite meetings, they invite in accordance with the provision of the law."[515]

Respondent 10 argued, "At times the management of the company and some selected members of the company have some ulterior motives. May be they want to short change or manipulate the entire process, that is why not all the entire members would receive the notice on time."[516] In a similar view, Respondent 4 also believed that there is a problem of delay in receiving notice of meeting. He explained:[517]

> *It has been a problem in corporate activities in Nigeria. We have been experiencing these problems. Personally, I have experienced it because I am a member of some companies, I have shares in many companies and in many instances the notices of meeting come to me even after the meeting must have held. It has been an existing problem. My personal opinion is that, it is part of the inefficiency in the postal system. Some of these things are deliberately manipulated so that members who are supposed to attend meeting do not attend in order to give the directors the opportunity to manipulate the proxy, and also to manipulate the conduct of the meeting without any resistance from the members of the company.*

[514] R3 (Lecturer), interviewed by researcher, Kano, Nigeria, October 26, 2016.
[515] R5 (Lecturer), interviewed by researcher, Kano, Nigeria, October 25, 2016.
[516] R10 (Company Secretary), interviewed by researcher, Kano, Nigeria, October 24, 2016.
[517] R4 (Lecturer), interviewed by researcher, Zaria, Kaduna, Nigeria, November 24, 2016.

On the effect of failure to give notice as required by law, Respondent 1 has this to say, "The law requires 21 days notice for every meeting. If you don't give notice as required by law, whatever decision that is taken can be invalidated. It is then imperative for directors to send the notices according to the law." [518] As a way forward, Respondent 3 suggested:[519]

> *Postal services are integral to business life. They need to be revamped. They need to learn lessons from other jurisdictions where the government courier services are competing with private companies and are doing better. The management should also come up with a tracking system. When you send notices, shareholders should be contacted at least 48 hours before the AGM to confirm if they have received their notices. There should also be return of deliveries from the courier services so that the management should know who gets notice and who has not.*

Respondent 8 equally acknowledged the inefficiency of the postal service as the reason for the delay but suggested:[520]

> *Companies should be sending notice of AGM earlier. They can use another alternative to send the notice. It could be through private postal service because of its speed compared to the government owned postal service. While we acknowledged the problem in the postal service, the companies should be preparing and sending notice ahead of time because, when the company did not prepare its annual report on time, it can hardly send notice on time and they would complain about delay.*

In his response, Respondent 15 mentioned:[521]

> *Where there is failure to give notice, definitely you have so many remedies. You can write a complaint to the Commission and the Commission would look at it and do what it is supposed to do according to the law. If we don't receive a complaint there is nothing we can do*

[518] R1 (Lecturer), interviewed by researcher, Jos, Nigeria, November 6, 2016.
[519] R3 (Lecturer), interviewed by researcher, Kano, Nigeria, October 26, 2016.
[520] R8 (Shareholder activist), interviewed by researcher, Lagos, Nigeria, December 12, 2016.
[521] R15 (Regulator), interviewed by researcher, Bauchi, Nigeria, November 28, 2016.

about it, but once there is a complaint, definitely we would look at provisions of the CAMA and we now give the appropriate remedy.

The above view was to the effect where a member has not been served with the notice of meeting, such a member may forward his complain to the CAC, then the CAC would investigate the complaint. According to the Respondent 15, the CAC can only act where it receives a complaint. That means members have to inform the CAC in case they do not receive notice.

3.5.4 Voluminous Documents

Some of the respondents were of the view that, management of a company tend to serve members with voluminous documents just a few days to the AGM, thereby making members to attend the meeting without carefully going through the annual report and accounts. In this context, five respondents were asked on whether it is true that members are served with voluminous documents few days to AGM (MSVD).

Table 3.4 *Service of Notice along with Voluminous Documents*

Respondent	**MSVD**
R3	It is true
R8	It is true
R10	It is true
R11	Neutral
R17	It is the responsibility of members to read through, even if they received voluminous documents

The above table shows that three respondents (R3, R8 & R10) out of five admitted that members are served with notice along with very voluminous documents that they

hardly read through before attending the AGM. This indirectly defeats the essence of giving adequate notice of 21 days as required by law, since they are expected to attend the AGM after they have carefully studied the contents of the notice as well as financial report and other circulars, to make a meaningful contribution at the meeting. On the one hand, (R11) was neutral on whether notice of meeting is served along with voluminous documents while (R17) maintained that even if members are served with such voluminous documents, they have to go through it. The detail of responses gotten from the respondents is reported: Respondent 3 when asked about serving members along with voluminous documents, he affirmed:[522]

> *A lot of members if you discuss with them, they would tell you that they received notice along with bulky documents, few days before the AGM. It is a general problem across the board. Like I said, you cannot avoid implying some managerial tactics to disenfranchise the shareholders tactically.*

According to Respondent 17, "At times, this notice of meeting is a very bulky document. For even a literate shareholder to have time to study the document and look at areas where to challenge the management or praise the management for doing a wonderful job is time taking."[523] According to Respondent 10:[524]

> *From my own experience, where management has ulterior motive or want to have their own ways they tend to give very short notice to members and they tend to send them voluminous documents so that they cannot be able to read them. Technical documents, voluminous documents, so that when they get to the meeting, members of the meeting would start complaining that we just received the notice 2 or 3 days back or less than 24 hours. At the meeting, the company would say we just give you 30 minutes to go through the documents before the meeting progresses. This one is a serious problem on that. There is need for penalty on any officer involved in that.*

[522] R3 (Lecturer), interviewed by researcher, Kano, Nigeria, October 26, 2016.
[523] R17 (Regulator), interviewed by researcher, FCT Abuja, Nigeria, November 22, 2016.
[524] R10 (Company Secretary), interviewed by researcher, Kano, Nigeria, October 24, 2016.

Respondent 8 in this regard maintained, "If shareholders are served with bulky documents attached with the notice, it is their responsibility to go through it."[525]

3.5.5 Publication of Notice of AGM

Respondents were asked about whether the requirement of law to publish notice of AGM in two national dailies is enough publication to members (PNTND) and whether there is need to publicise in more than two national dailies (NPNMTND). Similarly, some of the respondents raised the issue some of the newspapers though (national) but only circulate within a region in Nigeria (CPR) which may be a barrier to publicity requirement under the law. Another issue that may be a barrier to publicity requirement in national dailies relates to accessibility and reading of newspapers by members (ARN).

Table 3.5 *Publication of Notice*

Respondent	PNTND	NPNMTND	CPR	ARN
R1	Enough			Very low
R2		Not enough	Limited	Very low
R3	Enough			Very low
R4	Enough			Very low
R5	Enough			
R7	Enough			
R8		Not enough		
R9	Enough			Very low
R10	Enough			
R11	Enough		Limited	Very low
R13	Enough			
R14	Enough			Very low

[525] R8 (Shareholder activist), interviewed by researcher, Lagos, Nigeria, December 12, 2016.

R15	Enough		
R16		Not enough	
R17	Enough		Limited

Based on the above table, fifteen respondents were asked on whether publication of notice in two national dailies is enough. Twelve respondents (R1, R3, R4, R5, R7, R9, R10, R11, R13, R14, R15 & R17) out of the fourteen respondents were of the view that publication of notice in two national dailies is enough. Three respondents (R2, R8 & R16) out of the fourteen were of the view that notice should be published in more than two national dailies. On the one hand, three respondents (R2, R11 & R17) pointed out that circulation of newspapers in a particular region in Nigeria has made it difficult to achieve the requirement of law to publish in at least two national dailies in Nigeria. Furthermore, seven respondents (R1, R2, R3, R4, R9, R11 & R14) pointed out that access to newspapers and reading of national dailies in Nigeria is very low compared to other means of communication which would be considered in the next subheading.

On the earlier question on whether publication in at least two national dailies is enough, Respondent 15 was of the view that, "Members may decide that instead of serving us personally, when you publish the notice in two national dailies, it is okay. Provided it does not contravene the provisions of the CAMA 1990 it is still valid."[526] Respondent 3 has this to say, "The reason why the CAMA 1990 requires publicity in the national dailies is that the notice should not just be a direct one, there is another constructive notice that enables shareholders to attend. The one in the dailies does not contain the necessary details. To me, it is enough."[527] Respondent 4 stated that:[528]

[526] R15 (Regulator), interviewed by researcher, Bauchi, Nigeria, November 28, 2016.
[527] R3 (Lecturer), interviewed by researcher, Kano, Nigeria, October 26, 2016.
[528] R4 (Lecturer), interviewed by researcher, Zaria, Kaduna, Nigeria, November 24, 2016.

> *I believe that provision in the CAMA on publication in newspapers is a welcome development. It is put in place to at least give notice to those who might not have got the notice posted or sent to them by whatever means. It is believed that many people would see it even without receiving the actual notice that is sent to them.*

Respondent 13 believes, "Publication of notice of AGM in two national dailies to me is enough, but then many shareholders do not read newspapers."[529] Additionally, Respondent 14 mentioned, "To me, I see no problem with publicising notice in two national dailies. My only constraint is that the law does not reflect the kind of membership we have in companies. Many of them do not read newspapers, and more so, it is obvious that one has to buy newspapers every day in order to see the notice, this is not possible."[530] In a similar view, Respondent 11 asked, "How many people read newspapers? Most people are inclined to watching foreign stations; they do not have the time actually to see those notices in newspapers."[531] Respondent 2 equally share the same view when he said:[532]

> *How many people can afford to buy newspapers? Many of the newspapers are in English and majority of the shareholders are not English literate. How would they know there is any notice? This provision of the law needs to be reconsidered if indeed you want people to be aware of the businesses by the board of companies and you really want to give them their right to participate and vote during AGM.*

According to Respondent 9, "I have a background of working in a newspaper company. I have attended some courses as company secretary/legal adviser. Honestly

[529] R13 (Company Director), interviewed by researcher, Kano, Nigeria, December 9, 2016.
[530] R14 (Company Director), interviewed by researcher, Lagos, Nigeria, December 10, 2016.
[531] R11 (Company Secretary), interviewed by researcher, FCT Abuja, Nigeria, November 13, 2016.
[532] R2 (Lecturer), interviewed by researcher, FCT Abuja, Nigeria, October 27, 2016.

speaking, it depends on how many people read newspapers. To be frank with you, it is only the elites who read newspapers."[533] Respondent 4 equally has this to say:[534]

> *Many people do not really have access to national dailies because it means that you would be reading newspapers on a daily basis. Even I that I am sitting here, it takes one week before I have seen a daily because I don't have the financial capacity to be buying newspapers on a daily basis. That is the problem, if you see the faculty staff are able to get national dailies, you would find out that their HOD or Dean use the Department's or Dean's vote to do that, and not their personal money.*

Respondent 5 equally has a similar view with Respondent 4 stated:[535]

> *The two dailies are enough. I think the rationale for giving the notice in the newspapers is for the sake of other regulating bodies like Securities and Exchange Commission, to know that the company is doing the right thing, especially for public companies.*

Respondent 17 also states, "To be fair, two national dailies that widely circulate are enough and all the companies are complying. Even if you look at it from southern and northern parts of the country, you can at least get two. You can either use *punch newspaper, the nation, leadership, daily trust*. All these papers circulate within the six geo-political zones."[536] According to Respondent 17, the two national dailies must circulate across both southern and northern part of the country.[537] Respondent 2 also share the same opinion on the fact that the newspaper only circulates within a particular region in the country. He said, "If the management wants to be fraudulent, they can exploit this provision because it is not comprehensive. Nigeria is such a country that

[533] R9 (Company Secretary), interviewed by researcher, FCT Abuja, Nigeria, November 14, 2016.
[534] R4 (Lecturer), interviewed by researcher, Zaria, Kaduna, Nigeria, November 24, 2016.
[535] R5 (Lecturer), interviewed by researcher, Kano, Nigeria, October 25, 2016.
[536] R17 (Regulator), interviewed by researcher, FCT Abuja, Nigeria, November 22, 2016.
[537] R17 (Regulator), interviewed by researcher, FCT Abuja, Nigeria, November 22, 2016.

is regionally organised and that does not exclude the business of newspapers. Some might be national, but they are not in circulation in every part of the country."[538]

Respondent 5 believed, "Publication in 2 national dailies is enough because the regulators read newspapers and by law, any publication in the newspapers is adequate information dissemination."[539] Respondent 7 equally share the same view. He maintained, "It is left for the company to choose which of the two daily newspapers to make use of."[540] In a similar view but with different reasoning, Respondent 10 has this to say:[541]

> *The two national dailies from my own perspective are okay. The problem is that the law should be specific on those two national daily newspapers because, there might tend to be a problem where for example my company is located here in Kano but some of the shareholders are in Lagos, some of them are in Ondo. I might tend to use a newspaper even though the newspaper circulates as a national newspaper but unfortunately, the other part of the country may not tend to see or read that newspaper. So at least, the law should make a specific reference, that one of the two national newspapers should be within the local area where a company operates and then the other one should be in the other part of the country where at least 2/3 of the entire country or entire jurisdiction of the company covers.*

The above view pointed out to the fact that, limited circulation of national dailies to a specific region in Nigeria is the challenge against publication of notice. Respondent 11 in a similar view maintained that:[542]

> *Most of the so called national dailies are actually regionalized, in the sense that you have daily trust for the north the sun for the east, the nation for the south west. By and large, what a prudent and pro-active company should do is to take those regionalised media and focus on dividing their publication. Making a publication in daily trust and making a publication*

[538] R2 (Lecturer), interviewed by researcher, FCT Abuja, Nigeria, October 27, 2016.
[539] R5 (Lecturer), interviewed by researcher, Kano, Nigeria, October 25, 2016.
[540] R7 (Shareholder activist), interviewed by researcher, FCT Abuja, Nigeria, October 27, 2016.
[541] R10 (Company Secretary), interviewed by researcher, Kano, Nigeria, October 24, 2016.
[542] R11 (Company Secretary), interviewed by researcher, FCT Abuja, Nigeria, November 13, 2016.

> *in the sun would give wider coverage in terms of reaching the shareholders. The democracy of the company also matters, if you have a company that is northern-based, it would do them good to use a northern newspaper in getting across its members.*

Respondent 3 in this regard added:[543]

> *Although the CAMA 1990 requires publication in two national dailies as this an additional requirement. However, it ignores some critical factors; Nigeria is a country that is populated by people who do not actually read the papers. The newspapers themselves are to a large extent regionalised, with the exceptions of 2, 3, or 4 papers, most of the papers are regionalised, in the sense that they are confined to some regions or cities in the country. So, the outreach that is required may not be made. These are some of the tactics that can work against the publicity requirement under the CAMA 1990 regarding the national dailies.*

The above view also emphasised on the fact that, the national dailies only circulate within a specific region in Nigeria. According to Respondent 11:[544]

> *The requirement is quite enough, and it has achieved its purpose because, for companies that are very active, they do the publication weeks or months before the AGM. If you have seen the publication that would give you ample time to take any step you want to take. The publication is very important. For example, if you look at leadership (newspaper) a lot of people don't read it, it is possible that some people are tilted to a particular newspaper and the company has been using another newspaper, so relying on newspaper is alone is not enough.*

However, Respondent 16 argued that publication in two national dailies would ensure wide publicity of notice to shareholders. He maintained, "As it is by law, two national newspapers are not enough because how do you do for instance in Nigeria where you have zones. In the north, the major newspaper is *daily trust*. In the south, it is the *vanguard, the punch, the nation,* etc. How do you determine which one to make use of? It should, therefore, be at least five, not two."[545] Respondent 2 equally believed

[543] R3 (Lecturer), interviewed by researcher, Kano, Nigeria, October 26, 2016.
[544] R11 (Company Secretary), interviewed by researcher, FCT Abuja, Nigeria, November 13, 2016.
[545] R16 (Regulator), interviewed by researcher, Kano, Nigeria, November 21, 2016.

that "Two national dailies are not enough."[546] Respondent 8 was of the view that "The law says a minimum of 2 national dailies, there is nothing that stops a company from publicising notice in more than two national dailies if it has the money."[547] Based on their view, there is need to add the number of national dailies.

According to Respondent 16, "Based on the number of national dailies now, people are encouraged, and it is part of the regulatory requirements for companies to send notices or send major information."[548] Respondent 1 maintained, "Use of newspapers is a secondary method of sending notices. The primary means of sending notice is using shareholder's addresses."[549] Although, publication in national dailies is secondary, it is still important since some members may only rely on notice published in the national dailies. Respondent 1 added:[550]

> *The AGM is supposed to control the directors and scrutinise them and it is not everybody that wants to submit themselves to the scrutinisation of the AGM. As a consequence of that, they embark on all sorts of gimmicks. They do not care whether this newspaper is national or local. People in Lagos don't read daily trust despite the fact that it is a national newspaper. All these can be removed with ICT.*

When asked about how to improve on the requirement for two national dailies, Respondent 2 suggested, "We should ask for at least three national dailies that must include regional spread. The *daily trust* and *leadership* are northern newspapers, *vanguard and the guardian* are Lagos based while *the sun* is in the south-east. Let

[546] R2 (Lecturer), interviewed by researcher, FCT Abuja, Nigeria, October 27, 2016.
[547] R8 (Shareholder activist), interviewed by researcher, Lagos, Nigeria, December 12, 2016.
[548] R16 (Regulator), interviewed by researcher, Kano, Nigeria, November 21, 2016.
[549] R1 (Lecturer), interviewed by researcher, Jos, Nigeria, November 6, 2016.
[550] R1 (Lecturer), interviewed by researcher, Jos, Nigeria, November 6, 2016.

there be a regional spread. Membership of a company is not restricted to one region."[551] However, Respondent 3 was of the view that:[552]

> *Even if you increase the number of dailies to publicise the notices, it would go to nothing, as far as the outreach is concerned, because you have a comparative means that is alternatively better than the newspapers. The newspapers should not be discarded, since there are so many Nigerians that go through the papers daily but it should be supplemented so that apart from the direct notice that members received containing the details. There should also be notice in the papers and also in the other means of broadcast e.g., the radio to enable the public have idea as to the meeting, the venue and time.*

In this regard, Respondent 9 has this to say:[553]

> *The issue of publishing notice of meeting using two newspapers is just a statutory requirement. And for it becomes statutory by saying ten newspapers; it may become too tedious and stringent on the companies. I think publication in newspapers would not improve notice of meeting to members. I think the use of other means of publication is better than newspapers. That is my opinion.*

Based on the responses, it is not to say that two national dailies are not enough, but other factors limiting their coverage and access affects the requirement. Moreover, the management would look at the financial burden where they are asked to publish in more than two national dailies.

3.5.6 Use of Radio Station to Broadcast Notice of AGM

When respondents were asked on the publication of notice in two national dailies as required by law and other non-legal provisions, they suggested that the best medium of informing members about meeting should be through radio stations. In response to

[551] R2 (Lecturer), interviewed by researcher, FCT Abuja, Nigeria, October 27, 2016.
[552] R3 (Lecturer), interviewed by researcher, Kano, Nigeria, October 26, 2016.
[553] R9 (Company Secretary), interviewed by researcher, FCT Abuja, Nigeria, November 14, 2016.

this, eleven respondents were asked whether radio stations would be an effective means to broadcast notice of meeting (RSEMBN)? All the eleven respondents unanimously held the view that an effective means to broadcast notice of meeting should be the radio stations. Although, it is viewed to be an effective means, it is not a viable option from the legal point of view. The response of the respondents is presented in the table below:

Table 3.6 *Notice Through Radio Stations*

Respondent	**RSEMBN**
R2	Yes
R3	Yes
R4	Yes
R7	Yes
R8	Yes
R9	Yes
R11	Yes
R13	Yes
R14	Yes
R16	Yes
R17	Yes

Based on the above table, all the eleven respondents (R2, R3, R4, R7, R8, R9, R11, R13, R14, R16 & 17) were of the view that one of the effective way to inform member should be through the radio stations, because it has wide coverage all over the country and a lot of people if not all, listened to a radio station in Nigeria.[554] Similarly, two respondents (R2 & R16) were asked whether there should be use of local languages in airing notice of meeting through radio stations? Each of the two respondents held a different view. Respondent 2 maintained that there should be use of at least three major

[554]R2 (Lecturer), interviewed by researcher, FCT Abuja, Nigeria, October 27, 2016; R4 (Lecturer), interviewed by researcher, Zaria, Kaduna, Nigeria, November 24, 2016.

local languages while Respondent 16 was of the view that the English language is enough. Some of the excerpt are presented below:

Respondent 2 when asked about the possibility of using radio station to invite members for AGM he stated, "There was a time I did a research on listenership. I realised that Nigerians are closer to the radio stations than the television or print media. An average Nigerian, especially of the northern part has a radio set that he follows the news."[555] Respondent 3 also believed, "For a Nigerian, the most customary way of communication, the most popular and dominant way of communication is the radio."[556] Respondent 9 in support of the views held by Respondent 2 & 3 "To be frank with you, it is only the elites who read newspapers. A lot of local people listen to the radio."[557] The same opinion was shared by Respondent 7 when he said, "Radio is an excellent platform because many of the shareholders are illiterate and they have a lot of investments in these companies,"[558] likewise Respondent 8 "It can help in disseminating notice of meeting,"[559] and Respondent 4. According to Respondent 13 "It would be better if the companies would look at the possibility of using radio stations if we are talking about listenership in Nigeria. The law should make provision for publication of notice through radio stations."[560] In a similar view, Respondent 14 believed, "It would be better if the law makes provision for other means of publicising

[555] R2 (Lecturer), interviewed by researcher, FCT Abuja, Nigeria, October 27, 2016.
[556] R3 (Lecturer), interviewed by researcher, Kano, Nigeria, October 26, 2016.
[557] R9 (Company Secretary), interviewed by researcher, FCT Abuja, Nigeria, November 14, 2016.
[558] R7 (Shareholder activist), interviewed by researcher, FCT Abuja, Nigeria, October 27, 2016.
[559] R8 (Shareholder activist), interviewed by researcher, Lagos, Nigeria, December 12, 2016.
[560] R13 (Company Director), interviewed by researcher, Kano, Nigeria, December 9, 2016.

or airing notice, like through radio and Television stations, it would get more publicised than the newspapers."[561] According to Respondent 3:[562]

> *The most effective means of communication for a Nigerian, even those in the villages and those in the towns is the radio. The radio is the most effective even the illiterate you would find that they have access to a radio. It is very cheap to obtain and it is portable and easy to move with it and you would find that almost every Nigerian listen to a radio. This is in sharp contrast with the newspapers. The newspapers are dailies, you have to purchase daily and the status of most Nigerians is such that they are not in a position to purchase newspapers consistently. Even though we are talking of investors, who are presumably rich, is not every investor that is reading the papers. Most investors only listen to financial programs on the television or radios.*

Respondents were unanimous that the use of radio stations would be an effective means to disseminate notice of AGM. However, according legal recognition for this would not be viable due to many challenges that would arise where a member was unable to listen to a particular notice broadcasted the on the radio.

3.5.7 Place of Meeting

In this regard, fifteen respondents were asked about the accessibility of the place of meeting in terms of member's participation in the AGM (APM). Their responses are shown in the next table:

[561] R14 (Company Director), interviewed by researcher, Lagos, Nigeria, December 10, 2016.
[562] R3 (Lecturer), interviewed by researcher, Kano, Nigeria, October 26, 2016.

Table 3.7 *Access to Place of Meeting*

Respondent	APM
R1	Not accessible
R2	Not accessible
R3	Not accessible
R4	Not accessible
R5	Accessible
R6	Neutral
R7	Not accessible
R8	Neutral
R9	Not accessible
R10	Not accessible
R11	Not accessible
R12	Accessible
R13	Neutral
R14	Not accessible
R16	Neutral

Based on the above table, majority of the respondents, nine (R1, R2, R3, R4, R7, R9, R10, R11 & R14) out of fifteen held the view that there is a problem of inaccessibility of the venue as requires by CCGPCN 2011. Only two respondents (R5 & R12) out of fifteen were of the view that the place of meeting is accessible to members while four respondents (R6, R8, R13 & R16) maintained a neutral position. Additionally, two respondents (R3 & R4) added that the problem might be due to the unenforceability of the CCGPCN 2011 since it cannot be enforced in a court of law. The details of responses gotten from the Respondents is seen here. Respondent 7 opined that "Only insignificant number of shareholders, attends AGM. Many are not attending. Location

is a serious problem."[563] When asked about the accessibility of venue for AGM, Respondent 9 stated:[564]

> *In practice, it is not always the case. A lot of members of public companies do not always participate compared to private companies. When you look at banks in Nigeria, most of the head offices are in Lagos, so almost all AGMs do hold in Lagos. Only a few hold their AGMs in Abuja. Look at the number of people who attend AGM, sometimes they are not up to 2/3, but as long as they form a quorum, it is okay.*

However, Respondent 4 stated, "The problem is that the code of corporate governance is not a statutory provision. It does not have mandatory enforcement or application. It is voluntary observance. Companies are encouraged to promote corporate management."[565] Additionally, Respondent 3 believed that "The provision in the code of corporate governance regarding affordability and accessibility of place/venue for AGM is very laudable. It is a very good provision, but I think is not enough in the sense that the code itself has an enforceability vacuum. There is no legal machinery to enforce its provision".[566]

Respondent 1 linked the challenges associated with notice of meeting and place/venue of meeting in the following words "A company can fix the venue to an unsuitable place like Maiduguri (where there has been insecurity) so that people would not be able to attend. It is because of the politics played by the directors in order to continue to perpetuate their interest".[567]

[563] R7 (Shareholder activist), interviewed by researcher, FCT Abuja, Nigeria, October 27, 2016.
[564] R9 (Company Secretary), interviewed by researcher, FCT Abuja, Nigeria, November 14, 2016.
[565] R4 (Lecturer), interviewed by researcher, Zaria, Kaduna, Nigeria, November 24, 2016.
[566] R3 (Lecturer), interviewed by researcher, Kano, Nigeria, October 26, 2016.
[567] R1 (Lecturer), interviewed by researcher, Jos, Nigeria, November 6, 2016.

Respondent 10 was of the view that, "Even if members received the notice on time, the place of meeting might be difficult for them to access it."[568] Respondent 1 stated: "We have companies that has up to 500, 000 shareholders. If you are to have 500, 000 members present, where would you keep them? That is a challenge".[569] Respondent 11 has this to say:[570]

> *The truth of the matter is that, accessible to place of meeting in terms of affordability is completely absent to a large extent. You have shareholders scattered all over the country. Like I said, most of the AGMs are usually held in Lagos or Abuja. Many members that cannot afford to pay and come down to Abuja. It is a challenge at the moment that a lot of shareholders cannot access the place/venue.*

However, according to Respondent 12, the place/venue of their AGM is accessible to members, even though there is security challenge. In this regard, he said:[571]

> *Accessibility is not a problem because wherever we are holding a meeting we ensure that every shareholder can go there without any difficulty. An example is, during the Boko Haram insurgency, we used to have our AGM in Abuja. We always make sure that the environment for our meetings is conducive and accessible to all our shareholders.*

Responding to the same question, Respondent 16 also linked the issue of venue to insecurity currently in the north-eastern Nigeria. He opined that:[572]

> *Prior to Boko Haram (insurgency), there used to be AGMs in Kano, Kaduna, Borno and in some cases Bauchi and Gombe (northern Nigeria). But when this insurgency started, the only AGM that held in the north was the one at Ashaka, Gombe because the companies were scared of the insurgency. Largely, we can say the major cities across Nigeria are their targets; Lagos, Port Harcourt, Kano, Abuja and Kaduna which if you look carefully they are the naf cities and are accessible, only that the minority shareholders might not be able to attend if it is in Lagos or Kano for instance.*

[568] R10 (Company Secretary), interviewed by researcher, Kano, Nigeria, October 24, 2016.
[569] R1 (Lecturer), interviewed by researcher, Jos, Nigeria, November 6, 2016.
[570] R11 (Company Secretary), interviewed by researcher, FCT Abuja, Nigeria, November 13, 2016.
[571] R12 (Company Director), interviewed by researcher, Kano, Nigeria, November 22, 2016.
[572] R16 (Regulator), interviewed by researcher, Kano, Nigeria, November 21, 2016.

Respondent 16 also added that:[573]

> *If for instance, you site an AGM in Borno today, with the insecurity, members would still attend because the regulatory authorities have encouraged shareholders to form associations. Through these associations, wherever you have this AGM, they would do as much as they can to have representatives on their behalf. They cannot vote but they can voice out their stand on certain issues. So, participation-wise, if it is held in Kano, Lagos or Abuja, the turnout would be in large number. At times, you see it in Sokoto, but the turnout would not be the same as if it were to be held in the domain, like Ashaka where most of the shareholders are from the north.*

According to Respondent 6:[574]

> *Occasionally before now, some of the companies were holding their AGM's in Abuja until the advent of Boko haram which scared them and then they have been holding it in Lagos. Sometimes they move the AGM outside Lagos, to hold it in areas where they have business relationship, like the oil companies sometimes they go to Port Harcourt, sometimes they go to Akwa Ibom, and so on. It is just to show the community that they have a business relationship. I think they have done well in that. I can tell you when a company perceived that there was going to be trouble in the AGM, the company decided to take the AGM to Maiduguri so must of the troublemakers were scared and we went to Maiduguri and we had a peaceful AGM. On very rare occasions you find companies trying to escape the trouble of shareholders in Lagos.*

Respondent 1 believed, "Accessible and affordable is at the discretion of the board of directors. Where is accessible is at the opinion of the directors, generally, there is a challenge in respect of accessibility of the venue."[575] Respondent 13 when asked on whether venue of AGM is accessible to members, he responded, "Well, I am part of the management and all I can say is that many of the meetings if not all take place in the state where the corporate head office is situated."[576] Respondent 4, on the one hand,

[573] R16 (Regulator), interviewed by researcher, Kano, Nigeria, November 21, 2016.
[574] R6 (Shareholder activist), interviewed by researcher, Kano, Nigeria, November 21, 2016.
[575] R1 (Lecturer), interviewed by researcher, Jos, Nigeria, November 6, 2016.
[576] R13 (Company Director), interviewed by researcher, Kano, Nigeria, December 9, 2016.

argues, "We have to look at the CAMA 1990 first; the provision is that venue of AGM should not be outside Nigeria and it stops there. So, a company can have its AGM any place in Nigeria."[577] However, Respondent 14 maintained that:[578]

> *The venue is very crucial to member's attendance, we look at the convenience of our members and in many cases, we fix the AGM in Lagos where most members would attend, but then, due to the fact that share ownership is divided across the country, some members still are not able to participate.*

The above views were to the effect that place of meeting is accessible to members. According to the Respondents, the management used to look at member's convenience in choosing the place of meeting. Respondent 2 equally believed, "If the management of a company wants to be fraudulent they have many ways of frustrating participation. If you take the AGM to a location that is inaccessible to members, you deny them their rights to participate in the management and their voting rights are hindered."[579] Adding his opinion on the same issue, Respondent 3 opined, "The board of the company can control the 'when and the where' of the meeting and if they have total control of the where of the meeting, the when of the meeting; they can easily use that to disenfranchise the shareholders."[580] Additionally, Respondent 1 also believed, "Directors are the controllers of the companies. It is their responsibility is not only to agree on the agenda but to fix the venue of the meeting. There are a lot of intricate policies or politics involved."[581] Respondent 1 above admits that management of a company does not always like members to attend the AGM, as such they may use place of meeting to limit participation. Respondent 3 believed that:[582]

[577] R4 (Lecturer), interviewed by researcher, Zaria, Kaduna, Nigeria, November 24, 2016.
[578] R14 (Company Director), interviewed by researcher, Lagos, Nigeria, December 10, 2016.
[579] R2 (Lecturer), interviewed by researcher, FCT Abuja, Nigeria, October 27, 2016.
[580] R3 (Lecturer), interviewed by researcher, Kano, Nigeria, October 26, 2016.
[581] R1 (Lecturer), interviewed by researcher, Jos, Nigeria, November 6, 2016.
[582] R3 (Lecturer), interviewed by researcher, Kano, Nigeria, October 26, 2016.

> *It is not the requirement of the law that a company must hold its meeting at the state of its headquarters. Always, consideration should be given to the interest of the shareholders in fixing the time and the venue, not just to fix it at the headquarters. To me, that is also another ploy to control the company by the managers, to hold the meeting where they could have more powers and more control, which is not advisable. A company that is based in Lagos can hold its meeting in Abuja, particularly where if from the register of members, it is established that membership or the number of members in Abuja is higher than the number of members in Lagos. A lot of things need to be taken into account in fixing the time and venue.*

Adding his opinion on the issue of controlling venue by management, Respondent 4 said:[583]

> *Another issue that actually hampers the attendance of meetings by members, is deliberately making the venue of meeting difficult for members to attend. They may decide to put the venue of the meeting where many members especially those who have small shares in the company. Even if they are going to declare dividend, by the time you spend money and attend the meeting, the money you would get would be insignificant/inconsequential.*

Respondent 10 when asked about the criteria used to fix the place of meeting, he responded:[584]

> *From my experience as a company secretary, most of the criteria we adopt is that we seek the consensus of the majority of our shareholders, especially on where to cite AGMs. In my own case, we normally cite our general meeting within the corporate head office of the company. That is where we hold our AGM. We look at so many factors: we look at the convenience of the shareholders; accessibility.*

In a different view, Respondent 5 believed, "The venue is usually held at a reputable hotel with the corporate headquarters of a particular company. I have never come across where venue became an issue. In my experience from 2001 to-date, it has

[583] R4 (Lecturer), interviewed by researcher, Zaria, Kaduna, Nigeria, November 24, 2016.
[584] R10 (Company Secretary), interviewed by researcher, Kano, Nigeria, October 24, 2016.

always been sweet."[585] He added, "Before you purchase shares, you should know the location of the corporate headquarters of that company. How do you expect a company that has its Headquarters is in Lagos to transfer their meeting to Kano? It is reasonable if majority of the shareholders are in Lagos."[586] Responding on the venue of AGM, Respondent 8 believed, "Depending on the part where many of the shareholders reside, the AGM takes place in Abuja (Federal Capital Territory) and Lagos. It depends on the discretion of the board and it takes place mostly near the shareholders."[587] Respondent 6, on the other hand, attached member's attendance at the place of AGM to the percentage of their shareholding. He argued that the number of shares one has in company determined to a large extend whether he would be attending the AGM or not. It is always not realistic for a member with small percentage of shareholding to be going to AGM every year.[588]

However, Respondent 7 maintained, "If a company has not given you any dividends, how can you afford going to Lagos from Kano just for AGM? Look at the risk and the cost involved. For the north, Kaduna should be the venue."[589] Respondent 10 suggested, "Companies should look at the possibility of situating or locating the venue of the meeting whereby it would be easily accessible to majority of the shareholders."[590] Similarly, Respondent 7 suggested, "AGM should be held in a location convenient to the generality of the shareholders. And there should be no limitation to the questions to be asked and answered or inequality between the

[585] R5 (Lecturer), interviewed by researcher, Kano, Nigeria, October 25, 2016.
[586] R5 (Lecturer), interviewed by researcher, Kano, Nigeria, October 25, 2016.
[587] R8 (Shareholder activist), interviewed by researcher, Lagos, Nigeria, December 12, 2016.
[588] R6 (Shareholder activist), interviewed by researcher, Kano, Nigeria, November 21, 2016.
[589] R7 (Shareholder activist), interviewed by researcher, FCT Abuja, Nigeria, October 27, 2016.
[590] R10 (Company Secretary), interviewed by researcher, Kano, Nigeria, October 24, 2016.

shareholders in terms of questions. It should be fair and equal."[591] In the same regard, Respondent 3 suggested that:[592]

> *The inclusion of certain provision of CCGPCN to CAMA would be a good way to start. The expansion of notice beyond 21 days ensures it makes provision on affordability and accessibility of the meeting and the venue. This is important because that would make that provision regarding affordability and accessibility enforceable*.

Based on the majority of responses, it may be said that accessibility to the place of meeting is a barrier to member's participation in the AGM, despite the requirement of the CCGPCN 2011 that requires the place of meeting to be accessible and affordable to member.

3.5.8 On Whether to Reimbursing Members with Transport Fare Would Improve Participation in the AGM

Some respondents pointed out that reimbursing members with transport fare may improve their participation in the AGM since there is a challenge concerning accessibility of place of meeting. In this context, five respondents were asked on whether reimbursing members with transport allowance may improve their participation in the AGM (RMTA).

Table 3.8 *Member's Transport Allowance*

Respondent	RMTA
R2	There is need to reimburse members
R7	No need to reimburse members
R10	There is need to reimburse members
R11	No need to reimburse members
R13	No need to reimburse members

[591] R7 (Shareholder activist), interviewed by researcher, FCT Abuja, Nigeria, October 27, 2016.
[592] R3 (Lecturer), interviewed by researcher, Kano, Nigeria, October 26, 2016.

Based on the above table, only two respondents (R2 & R10) out of five maintained that reimbursing members with transport allowance may improve their participation in the AGM. Three respondents (R7, R11 & R13) out of five held the view that there is no need to reimburse members with transport allowance, since it would be another burden on the company. In his response, Respondent 10 stated:[593]

> *There is the need for the company to consider the possibility of reimbursing members with their transport allowance, i.e., in the event where the number of stakeholders in a company who are entitled to come to the AGM are a sizeable number of shareholders.*

Sharing the same view, Respondent 2 suggested that:[594]

> *The law should make provisions where members who come from far distance are given transport allowance if at all they are the owners of the company. I know there is no any board member that would attend any of such a meeting without an appropriate remuneration. The owners of the businesses too should be given allowance depending on their distance. This would serve as a motivation.*

However, Respondent 13 said, "I am not of the opinion that shareholders should be reimbursed with transport and feeding allowance for attending AGM."[595] The same view was shared by Respondent 11, "That would be a heavy burden on the company and a lot of companies would not be able to survive such kind of huge expenditure as their running cost. The best they can do is to prioritize and a lot of companies are doing that."[596] Respondent 7 concludes, "Some shareholders in Kano would not attend AGM

[593] R10 (Company Secretary), interviewed by researcher, Kano, Nigeria, October 24, 2016.
[594] R2 (Lecturer), interviewed by researcher, FCT Abuja, Nigeria, October 27, 2016.
[595] R13 (Company Director), interviewed by researcher, Kano, Nigeria, December 9, 2016.
[596] R11 (Company Secretary), interviewed by researcher, FCT Abuja, Nigeria, November 13, 2016.

outside Kano even if you would pay for their transport."[597] Respondent 2 believed that:[598]

> *The Company should look at the monetary implication. If it is going to be a burden, then they should take across the tabulation of residence of the members. If 60% of the members are in south west, you can perpetually keep the AGM at south west and pay little to those coming outside, though it may cause some problems because those from the south west might also demand allowances. In any case, it is a cost-benefit analysis. It is rational if you have majority of members in Lagos, nothing would stop you from keeping it in Lagos.*

In this regard, majority of the respondents maintained that there is no need to reimbursed member's transport allowance. It is viewed as an additional burden on the company, but other means such as rotation should be employed that improves member's participation.

3.5.9 Rotation of Place of AGM

In this regard, ten respondents were asked on whether rotating the place of meeting (RPM) across the zones in the country would improve member's participation. This is because Nigeria is divided majorly into the northern and southern part. The northern is further divided into three geo-political zones while the southern part is also sub divided into three geo-political zones making Nigeria divided across six geo-political zones. Summary of their responses is presented in the table below:

Table 3.9 *Rotation of Place of AGM across various Zones in Nigeria*

Respondent	RPM
R2	Need for rotation of AGM
R3	No need for rotation of AGM
R7	Need for rotation of AGM

[597] R7 (Shareholder activist), interviewed by researcher, FCT Abuja, Nigeria, October 27, 2016.
[598] R2 (Lecturer), interviewed by researcher, FCT Abuja, Nigeria, October 27, 2016.

R8	Need for rotation of AGM
R9	Need for rotation of AGM
R10	Need for rotation of AGM
R11	Need for rotation of AGM
R13	Need for rotation of AGM
R14	Need for rotation of AGM
R16	Need for rotation of AGM

Based on the above table, nine respondents (R2, R7, R8, R9, R10, R11, R13, R14 & R16) out of 10 believed that rotation of AGM across the six-geo political zones in the country may improve better participation of members at AGM instead of fixing it at the corporate headquarters. On the one hand, only one respondent (R3) out of 10 held the view that there would not be any need to rotate the AGM. The details of responses from the interview is seen from the next paragraph.

When Respondent 13 was asked on whether rotating the AGM would improve member's participation. Respondent 13 states, "It would be a nice idea if the meeting of the company is rotated, that would give more participation avenue to shareholders."[599] Also, responding in the same view, Respondent 14 stated, "I think the law should make provision for rotating the AGM across the six geo-political zones in the country (particularly to be at states with majority shareholding). That would improve member's participation."[600] Respondent 7 equally believed, "It is better to rotate the AGM across the six geo-political zones in the country."[601] The same view was adopted by Respondent 16 where he said, "Rotation issue would be a welcome idea. Some of these aggrieved shareholders, their interest would be taken care of

[599] R13 (Company Director), interviewed by researcher, Kano, Nigeria, December 9, 2016.
[600] R14 (Company Director), interviewed by researcher, Lagos, Nigeria, December 10, 2016.
[601] R7 (Shareholder activist), interviewed by researcher, FCT Abuja, Nigeria, October 27, 2016.

because the company's AGM would be going around since they have shareholders everywhere in the country."[602] Additionally, Respondent 17 opined that:[603]

> *The issue of rotation would enable companies to reach out to many members. There is also the issue of greater part of shareholders residing in one zone. If the meeting is in that zone, there is actually going to be a greater participation. Niger Insurance as an example rotates their meetings from one place to another.*

In a related development, Respondent 10 has this to say:[604]

> *The company should look at the possibility of rotating considering where majority of the shareholder resides. For example, if we hold it in this region, then next year we hold it in another region. At least there would be tremendous participation of members when it comes to meetings of the company.*

Respondent 11 when asked about rotating the venue for AGM, he claimed that:[605]

> *Most of the meetings are held in Lagos or Abuja. They do not usually rotate it, it is stationed and that has been the tradition. Somebody in Bauchi, how do you expect him to start travelling to Lagos for shares that is not more a thousand Naira? The transport fare and every other thing would not be commensurate with what he spent. So, most members attend the AGM by means of convenience and the fact that they are stakeholders in the company.*

Respondent 7 suggested, "It is very important to rotate the meetings from Lagos and Abuja to cover areas like Kano where we have many shareholders."[606] In the same vein, Respondent 8 also believe that rotation of venue for AGM would give shareholders from other part of the country the opportunity to attend the AGM.[607] Respondent 8 added, "some companies may decide to rotate the meeting around the

[602] R16 (Regulator), interviewed by researcher, Kano, Nigeria, November 21, 2016.
[603] R17 (Regulator), interviewed by researcher, FCT Abuja, Nigeria, November 22, 2016.
[604] R10 (Company Secretary), interviewed by researcher, Kano, Nigeria, October 24, 2016.
[605] R11 (Company Secretary), interviewed by researcher, FCT Abuja, Nigeria, November 13, 2016.
[606] R7 (Shareholder activist), interviewed by researcher, FCT Abuja, Nigeria, October 27, 2016.
[607] R8 (Shareholder activist), interviewed by researcher, Lagos, Nigeria, December 12, 2016.

country while some may decide to fix it in Abuja."[608] Respondent 9 when asked about the rotation of venue for AGM, he said:[609]

> *That would absolutely help. Abuja is the Federal Capital, so it is fair if companies would rotate the AGMs. If it is held in Lagos this year, it should be held in Abuja the following year. The rotational issue should be part of the agenda of the meetings for at least ten years. For example, 2016 in Abuja, 2017 in Lagos, 2018 in Maiduguri, etc. I strongly agree with rotating the AGMs.*

Adding his view on the above, Respondent 2 maintained that:[610]

> *I think it would be fair and equitable to all if these AGMs are rotated at least to north and south or at best it should be rotated to the six geo-political zones in the country. If this year's AGM takes place in the North West, at least those in that zone have been favoured. Next one should then be taken place in the South West so that shareholders in that zone would have a sense of belonging and the opportunity to participate. Rotation would enhance participation.*

However, in a different view, Respondent 11 claimed, "A lot of companies have adopted the rotation approach. Their AGM is not fixed at a particular location; they move it round the country through the geo-political zones."[611] In a related development, Respondent 3 also claimed:[612]

> *I am not sure rotation would be a good way in addressing the challenges. I believe wherever you take the meeting, some people would be disenfranchised. In fact, the rotation can create sense of inconsistency, which is not good for a corporate organisations. I believe the rotation may seem an innovative idea, but in practical sense, I think is not a good one.*

[608] R8 (Shareholder activist), interviewed by researcher, Lagos, Nigeria, December 12, 2016.
[609] R9 (Company Secretary), interviewed by researcher, FCT Abuja, Nigeria, November 14, 2016.
[610] R2 (Lecturer), interviewed by researcher, FCT Abuja, Nigeria, October 27, 2016.
[611] R11 (Company Secretary), interviewed by researcher, FCT Abuja, Nigeria, November 13, 2016.
[612] R3 (Lecturer), interviewed by researcher, Kano, Nigeria, October 26, 2016.

Majority of the respondents in this regard were optimistic that rotating the place of meeting across various part of Nigeria may improve participation of members at AGM. Now, most of the AGM are being held in Lagos or Abuja.

3.5.10 Legal Problems Affecting Notice of AGM

In this regard, three respondents were asked about the legal problem affecting notice of meeting (LPNM) and the summary of their responses is presented in the next table:

Table 3.10 *Legal Problems Affecting Notice*

Respondent	LPNM
R3	Has to do with power struggle between management and members
R10	Has to do with law CAMA 1990 itself
R14	Has to do with law CAMA 1990 itself

From the above table, two respondents (R10 & R14) out of 3 pointed out that the problem affecting notice of meeting has to do with the CAMA 1990 not containing a suitable provision to warrant effective and prompt means of service. One respondent (R3) linked the problem to what he described as a power struggle between management and members to control the company. Thus, according to Respondent 1, that is what affects service of notice.[613] Respondent 14 opined, "The problem has to do with the law itself being what I can say long overdue for review."[614] Respondent 3 described the legal problems in the following:[615]

> *Part of the challenges relates to the power struggle between the board of directors and the shareholder at AGM. If the management controls the number of members who attend the general meeting; the venue; and*

[613] R3 (Lecturer), interviewed by researcher, Kano, Nigeria, October 26, 2016.
[614] R14 (Company Director), interviewed by researcher, Lagos, Nigeria, December 10, 2016.
[615] R3 (Lecturer), interviewed by researcher, Kano, Nigeria, October 26, 2016.

> *the resolutions to be adopted at the AGM it gives them a lot of leverage directing the company and perhaps even covering their ills or misdealing.*

Respondent 10 opined, "The problem has to do with the CAMA itself. That is the major problem because it has given the management, the board and the majority shareholders too many powers."[616] Respondent 14 suggests, "The law should look at including various ways of sending notice of AGM that is fast, cheap and affordable. The private courier services are more effective than the government owned and the voting process also should be by ballot as I earlier said."[617] In a different view, Respondent 10 believed, "There should be an amendment to the law."[618]

3.6 Conclusion

This chapter discussed various legal provisions in the CAMA 1990 that addressed member's participation in the AGM in Nigeria, specifically on the notice of AGM. On the one hand, comparison was made between the provisions of CAMA 1990 and that of CA 2016 respectively, with a view to improve the CAMA 1990 as relates to notice of AGM. It is seen that both the two principal legislation namely, the CAMA 1990 and CA 2016 have certain provisions that are similar in meaning and contents. On the other hand, several provisions are entirely different in the respective legislation. The provisions of the CA 2016 are more advanced than that CAMA 1990. Furthermore, the CA 2016 clearly recognised the use of ICT or electronic medium relating to notice of AGM which is in contrast with the CAMA 1990. Detail examination of the application of ICT would be made in chapter five of this study.

[616] R10 (Company Secretary), interviewed by researcher, Kano, Nigeria, October 24, 2016.
[617] R14 (Company Director), interviewed by researcher, Lagos, Nigeria, December 10, 2016.
[618] R10 (Company Secretary), interviewed by researcher, Kano, Nigeria, October 24, 2016.

The examination of various codes of corporate governance in this chapter reveals that they have made explicit and elaborate provisions than the principal legislation. However, the codes have a legal vacuum since they cannot be legally enforced in a court of law. The report and analysis of data in this chapter reflect the practical experience and opinion of various respondents on member's participation in the AGM in Nigeria with specific reference on notice of AGM. Their responses have given a clear understanding of practical issues relating to notice of AGM. Further responses from the respondents consolidate on the problems statement already pointed out in chapter one this study. The next chapter would focus on remedies available to members.

CHAPTER FOUR

MEMBER'S REMEDIES

4.1 Introduction

This chapter would focus on the concept of remedies, the adequacy of the remedies available to members as well as the enforcement of the remedies. The chapter examined the role of shareholder association and the regulatory bodies towards the enforcement of member's remedies relating to notice and participation of members in the AGM. The chapter would attempt to answer research question two which reads: What are the remedies available to members who are unable to participate at the annual general meeting (AGM) due inability to receive of notice AGM under Nigerian company law? The chapter aims to achieve research objective two, which is to examine the remedies available to members of a company under Nigerian company law in the event of failure to receive notice of AGM. The chapter adopts doctrinal methodology and complemented by fieldwork. The doctrinal methodology is primarily library based while the fieldwork concerns qualitative interview. Furthermore, the chapter compare certain legal provisions and decided cases in Nigeria and Malaysia respectively.

4.2 The Concept of Remedy

This sub heading attempts to discuss the concept of remedies from the legal and theoretical aspect. This would serve as a foundation for discussion in this chapter. There is no definition of the term "remedy" under the Companies and Allied Matters

Act 1990 (CAMA 1990). However, remedy was defined to mean a process by which "violation of a right is prevented, redressed, or compensated."[619] In *Jackson v. Horizon Holidays Ltd*[620] on the issue of right and remedies, the court held that remedy is a focal point for all legal rules that operate both on the fact and the law. In another word, the existence of certain right entitles one to some remedies.[621] Thus, remedy is still regarded by the English law as an "active institution" that expands the scope of liability.[622] The maxim '*Ubi jus ibi remedium'* (where there is right there is a remedy) aptly explain the above position.[623] According to the realist, it should be *'Ubi remedium ibi jus'* (where there is a remedy there is a right),[624] which is a reverse order of the earlier maxim. The legal right or interest often determine the nature of remedies available and the flexibility of the remedies ensures the effectiveness of the civil justice.[625] Although there are arguments that the above maxim does not reflect the current realities of today, since certain rights have no remedies or rather, it is difficult to enforce the remedies.[626] In another word, the availability of a remedy depends on the existence of a legal right.[627] In the case of *R v. West Sussex Quarter Sessions*[628] the court held that:

> If this court had jurisdiction to change the law so that justice could be done more easily and effectively, there are many new remedies which could be introduced, but we have no such jurisdiction. Part of that law is the common law: that part has a history which has formed it. Once a remedy developed by the common law has taken a certain form and its limitations have been defined, in my opinion, the judges should accept that form and

[619] http://thelawdictionary.org Featuring Black's Law Dictionary Free Online Legal Dictionary 2nd ed. (accessed April 1, 2017).
[620] *(1975) 1 WLR 1468.*
[621] Geoffrey Samuel, *Sourcebook on Obligations & Legal Remedies*, 2nd ed. (London, Cavendish Publishing Limited: 2000), 209.
[622] *Ibid*.
[623] Dash, Shreemanshu Kumar, "Equity and Law." *PARIPEX-Indian Journal of Research* 5.11 (2017).
[624] Lawson, *Remedies of English Law*, 2nd ed. (Butterworths: 1980), 1.
[625] Geoffrey, fn. 621 at 215.
[626] Wright, Charles Alan, "The Law of Remedies as a Social Institution," *U. Det. LJ* 18 (1954): 376.
[627] Burrows Andrew S. and Edwin Peel, *Commercial Remedies: Current Issues and Problems* (England, Oxford University Press: 2003).
[628] *(1973) 3 All ER 289.*

> use the remedy within its limitations. They can cast off any medieval or procedural shackles which may restrict the use of a remedy; they should not seek to change its nature.

The above decision pointed out to the fact that, the court cannot introduce new remedies, but rather limit itself to what the law provides. However, the court may observe strict procedure to limits the exercise of certain remedies. Furthermore, remedies may be classified into three broad categories: coercive remedy, declaratory and damages. The coercive remedy[629] is a type of remedy that makes it mandatory for a party to act or abstain from acting in a way through the order of injunction or specific performance.[630] Injunction is a relief granted by a court directing a party to perform or refrain from doing an act in question.[631] It is mostly available where an applicant is not entitled to damages.[632] An order of injunction is one of the remedies available to members under the CAMA 1990. Declaratory remedy, on the other hand, confirms the right of the plaintiff but does not entitle him to damages or specific performance. It set out the position of the respective parties before the court.[633] A party seeking a declaration must specifically ask the court for it. In the English case of *R (Hunt) v. North Somerset Council (Costs),* Lord Toulson[634] stated, "There is no 'must' about making a declaratory order. If a party who has the benefit of experienced legal representation does not seek a declaratory order, the court is under no obligation to make or suggest it." In this study, a declaration is also another remedy available to

[629] Laycock, Douglas, *Modern American Remedies: Concise ed.* Wolters Kluwer Law & Business, 2012.
[630] "Remedy: An Overview," (Legal Information Institute, Cornell University Law School). https://www.law.cornell.edu/mex/remedy
[631] *Sari Artists Film Productions Sdn Bhd v. Malaysia Film Industries Sdn Bhd (1974) MLJ 123* cited in Mohammad Saud Khasawneh, "Rights and Duties of Franchisor and Franchisee in Jordan," (Unpublished PhD Thesis, Universiti Utara Malaysia, 2016), 298; Anand, Andira Amnita. "Investor Rights after the Crisis," *Nat'l L. Sch. India Rev.* 27 (2015): 49.
[632] Mohammad Naqib Ishan Jan, *Law and Commerce: The Malaysian Perspective* (Malaysia: IIUM Press, 2011) 4-579.
[633] Bray, Samuel L, "The Myth of the Mild Declaratory Judgment," (2014); Levy, Marin, "Coming to a Better Understanding of Remedies," *Jotwell: J. Things We Like* (2014): 75.
[634] *(2013) EWCA Civ 1483*; Eliasson, Anna, and Shameem Ahmad, "Clarification on Awarding Costs and Relief: R (Hunt) v North Somerset Council," *Judicial Review* vol. 21, Iss. 4 (2016): 285-288.

members under the CAMA 1990. It is necessary to mention that both the coercive and declaratory remedies were viewed as equitable remedies while compensation (in the form of monetary remedy) was termed as a legal remedy.[635] On the one hand, damages entitled the plaintiff to have a monetary compensation for the loss or injury he has suffered and may restore the plaintiff to his initial position before the loss or injury.

Narrowing the discussion to member's remedies, it is necessary to state that, a member of a company is entitled to certain remedies based on the shares he/she has in a company. Thus, shares are regarded as personal property that empowers a member to participate in the activities of a company based on the provisions of the articles. In other word, shares as personal property and a portion of individual wealth confer an individual the right to seek redress in the event of any injury to such right.[636] In the case of *Prudential Assurance Co. v. Newman,*[637] the Court of Appeal supported the view that allowing a member to maintain a personal action for injury to the company which affects his shares would be contrary to the principle of corporate personality. Accordingly, suits in respect of an injury to the company must be in its own name.[638] Accordingly, shareholder dispute is one of the prevalent problems affecting private businesses and appears to be a global challenge.[639]

From the discussion, the most supportive theory are the civil recourse theory and the corrective justice theory. The civil recourse theory was developed mainly for Tort law.

[635] Bray Samuel L., "The System of Equitable Remedies," *UCLA Law Review* (2015).
[636] M. J. Sterling, "The Theory and Policy of Shareholder Action in Tort," *Modern Law Review* vol. 50 Iss 4 (1987): 468-491.
[637] *(1981) Ch 257.*
[638] *Foss v. Harbottle (1843) 2 Hare 461; 67ER 189.*
[639] Zipora Cohen, "Fiduciary Duties of Controlling Shareholders: A Comparative View," 12 U. PA. J. *Int'l Bus. L.* 379 (1991).

This theory argued that violation of right or wrongful conduct must be remedied.[640] A breach of duty entitled to the injured the right to seek redress in court.[641] This theory supports the right of members to seek redress for violation of their right by the management. On the one hand, the corrective justice theory which was initially developed to support tort claim entails that an individual must remedy a wrong occasioned by his wrongful act or omission.[642] If there is a violation of right it suffices the injured party to seek redress.[643] This theory can equally support the right of members to seek redress.

Consequently, availability of remedies under company legislation is not enough without recourse to access to justice. Thus, access to justice was defined as a process that facilitates exercising remedies through formal or informal institutions.[644] Access to justice would only be achieved where the justice system is acceptable to the people, and people are free to enforce their remedy. The justice system must be financially accessible, and people must have knowledge of their rights and how to exercise them.[645] In another word, the efficacy of the justice system is measured by its timely and appropriate dispensation of justice.[646] However, administration of justice in Nigeria takes too long and often expensive. The period from the filing of court process

[640] Oman Nathan B, "Why There Is No Duty to Pay Damages: Powers, Duties, and Private Law," *Fla. St. UL Rev.* 39 (2011): 137; Smith, Stephen, "Why Courts Make Orders (And What This Tells Us About Damages)," *Current Legal Problems* 64, no. 1 (2011): 51-87.
[641] Ripstein Arthur, "Civil Recourse and Separation of Wrongs and Remedies," *Fla. St. UL Rev.* 39 (2011): 163.
[642] Goldberg John CP, and Benjamin C. Zipursky, *Rights and Responsibility in the Law of Torts*, (2012).
[643] Schroeder, Christopher H, "Corrective Justice, Liability for Risks, and Tort Law," *UCLA L. Rev.* 38 (1990): 143.
[644] Van De Meene, Ineke, and Benjamin Van Rooij, *Access to Justice and Legal Empowerment. Making the Poor Central in Legal Development Co-operation*. Leiden University Press, 2016.
[645] *Ibid.*
[646] Halima Doma, "Enhancing Justice Administration in Nigeria through Information and Communications Technology," *The John Marshall Journal of Information Technology & Privacy Law*, vol. 32 iss.2 (2016) 89 at 94.

to obtaining judgement may take from 7 to 20 years.[647] For example, in *Maja v. Samouris,*[648] the matter took up to nine years in court. In *Obasohan v. Omorodion,*[649] the court spends sixteen years to decide the case whereas in the cases of *Onagoruwa v. Akinyemi*[650] and *Nwadiogbu v. Nnadozie*[651] it took the court 21 years and 23 years to give judgement, respectively. The above cases indicate how cases in Nigeria take an extended period of time before they are finally decided.

The enforcement of corporate rights in Nigeria is not an easy task. In this regard, Respondent 13 states, "To be frank, cases or rather administration of justice in the country takes very long time, and it is always not easy to go by."[652] In the same context, Respondent 14 added, "Enforceability of remedies in Nigeria is very difficult. Generally, in Nigeria, our court processes are very cumbersome and difficult. As it is, I have not seen cases where shareholders went to court to seek this remedy."[653] In a statement by the former Chief Judge of the High Court of the Federal Capital Territory, at the 2009/2010 legal year, he states that there were 6109 ongoing cases as against 9,038 cases at the close of 2010/2011 legal year. Reason being the administration of justice in Nigeria is very slow and complicated.[654]

[647] Halima, 95; *Ekperokun v. University of Lagos (1986) 4 NWLR 152* the matter took up to 7 years before it was finally decided.
[648] *(2000) 7 NWLR (Pt. 765) 78.*
[649] *(2001) 13 NWLR (Pt. 728) 298.*
[650] *(2001) 13 NWLR (Pt. 729) 38.*
[651] *(2002) 12 NWLR (Pt. 727) 315.*
[652] R13 (Company Director), interviewed by researcher, Kano, Nigeria, December 9, 2016.
[653] R14 (Company Director), interviewed by researcher, Lagos, Nigeria, December 10, 2016.
[654] Ladan, Muhammed Tawfiq, "Access to Justice and Justice Sector Reform in Nigeria," *Nigerian Law Reform Journal at* (2009): 55-78.

4.3 The Judicial Powers of Courts in Nigeria

The relevance of this subheading is to see how the courts in Nigeria are empowered to determine and enforce cases. The judicial power is the power of the court to decide a matter between two parties and give effect to the judgement.[655] The Nigerian Constitution vests the judicial powers on the court[656] as well as its hierarchy and jurisdictions. Chapter VII of the Constitution expressly made provision for the courts.[657] However, only the relevant courts would be highlighted. These are The Supreme Court of Nigeria (SCN), the Court of Appeal (CA), the Federal High Court of Nigeria (FHCN) and State High Court.

The SCN is located in the Nigeria's Federal Capital Territory, Abuja as the highest court of the land and its decision in both civil and criminal matters is final and cannot be appealed against. The SCN entertain appeals from the CA.[658] It is relevant to this study having in mind its appellate jurisdiction to entertain an appeal from the CA. The CFRN, 1999[659] equally established the Court of Appeal to entertain appeals from the lower courts.[660] The court has its headquarters in Abuja with nine (9) judicial divisions across major Nigerian cities. The Federal High Court of Nigeria was initially established as the Federal Revenue Court. Subsequently, the court was transformed into a specialised court with jurisdiction to entertain civil and criminal matters.[661] The FHCN has its headquarters in Abuja (the Federal Capital Territory) and judicial

[655] Halima, fn.646 at 94.
[656] Part II, s. 6 CFRN 1999 as amended.
[657] A. M. Sani, "The Nigerian Judiciary Trends Since Independence," *University of Ilorin Law Journal* 5 (2009). http://unilorin.edu.ng/ejournals/index.php/uilj/article/view/998/553
[658] s. 230, 232 & 233 CFRN 1999 as amended.
[659] s. 237 CFRN 1999 as amended.
[660] s. 240 CFRN 1999 as amended.
[661] s. 249(1) & 251(1)(e) CFRN 1999 as amended.

divisions in almost all the states in Nigeria. The court has co-ordinate jurisdiction with a State High Court; in that, no appeal shall lie from the State High Court to the FHCN and vice versa. The FHCN has exclusive jurisdiction over any civil matter arising from the operation CAMA 1990 or any regulation relating to the operation of any company registered under CAMA 1990.[662] Thus, where a dispute arises regarding the act or omission of anyone about the running of a company or the application of CAMA to a company (including shareholder litigation), the court of first instance is the FHCN. The State High Court has no jurisdiction in such matters. The State High Courts are established in all the 36 states of Nigeria and the Federal Capital Territory, Abuja with unlimited civil and criminal jurisdiction over causes and matters arising within their political region, except for those matters under the exclusive jurisdiction of the FHCN. Thus, where a dispute arises between two corporations or between a company and an individual where the subject relates to tort or contract, as an instance, a state high court has jurisdiction to entertain the matter.

4.3.1 The Right of a Company to Seek Redress in the Court

The legal right to institute an action for or against a company in its name was the effect of incorporation and the legal personality conferred upon a company.[663] In discussing the right of a company to seek redress in court, it is necessary to highlight on the principle established in the case of *Harbottle's* case.[664] The Nigerian Court of Appeal

[662] *Prince Abdul Rasheed Adesupo Adetona & Ors. v. Igele General Enterprises Ltd. (2011) LPELR-159 SC.*
[663] *Salomon v. Salomon (1897) 22 AC; Union Bank (Nig). Ltd v. Penny Mart Ltd (1992) 5 NWLR (Pt.240) 228 at 237;* Ubochioma Wiseman, "A Comparative Analysis of Shareholders' Derivative Action under the United Kingdom and Nigerian Companies Acts," *Business Law Review* 37.4 (2016): 136-152.
[664] *(1843) 2 Hare 461.*

in *Badagry Petroleum Refinery Limited & Anor v. Alhaji Rasaki Awayewa Aserere*[665] referred to the case of *Edwards & Ors v. Halliwell & Ors*[666] where Jenkins L. J., said the principle of law in *Harbottle's* case was primarily on the proper plaintiff and the principle of majority rule. Similarly, in the Nigerian case of *Yalaju Amaye v. A.R.E.C. Ltd,*[667] the Supreme Court of Nigeria quoted the dictum of Jenkins L. J. in *Kunle Ladejobi & Ors v. Odutola Holdings Ltd* the power to control a company belongs to the majority members. They can contest the authority to institute an action in the name of the company because the company is the proper plaintiff in the event of wrong done against it.

Accordingly, in *Tanimola & Ors v. Surveys & Mapping Geodata Ltd & Ors*[668] the Court of Appeal Nigeria held that the operation of a company is principally by the would of the majority members. The principle of majority rule has been codified under the CAMA 1990 and has been pronounced in various decisions of the Nigerian courts. In this regard, the CAMA 1990 provides:[669]

> Subject to the provisions of this Act, where an irregularity has been committed in the course of a company's affairs, or any wrong has been done to the company, only the company can sue to remedy that wrong and only the company can ratify the irregular conduct.

Thus, an individual member of a company cannot institute an action to remedy a wrong or irregular conduct.[670] In the Nigerian case of *Njemanze v. shell B.P. Port Harcourt*[671]

[665] *(2002) 12174 C.A.*
[666] *(1950) 2 A. E. R 1064.*
[667] *(1990) 4 NWLR (Pt 145) 422.*
[668] *(1995) 6 NWLR (Pt 403) 617.*
[669] s. 299 CAMA 1990.
[670] *Gombe v. P.W. (Nig.) Ltd (1995) 6 NWLR 402 SC; Ejikeme v. Amaechi (1998) 3 NWLR (Pt. 542) 456 C.A.; Daily Times (Nig) Plc v. Akindiji (1998) 13 NWLR (Pt. 580) 22 at 27 CA. and N.I.B. Invest. West Africa v. Omisore (2006) 4 NWLR (Pt. 969) 122 C.A.*
[671] *(1966) All NLR 8; see also Vassile v. Paas Industries Ltd (2000) 12 NWLR (Pt. 681) at 357.*

the court held that once a company is incorporated, it is only the company that can enforce its rights and obligation. An individual member is prohibited from assuming to himself the right of action that only belongs to the company. The above decision was to the effect that, it is only the company that has right to remedy a wrong. In the case of *New Resources Int'l Ltd & Anor v Ejike Oranusi Esq*[672] the court held that "No member of a company has a right to unilaterally commit the company on any matter without its consent and approval. Let me emphatically say that no member of a company is allowed to wake up one morning and sell off the company."

The principle of majority rule emphasised the that the court should not obstruct the action of the management.[673] It should be the responsibility of members to decide how to run the affairs of the company or a direction the company should follow, through passing resolutions at the general meeting.[674] The Supreme Court of Nigeria emphasised that whatever wrong may have been done by the directors, it is for members at the general meeting to approve such action or otherwise.[675] However, certain exceptions are codified under the CAMA 1990 where individual members can institute action in the name of the company. The CAMA 1990[676] provides:

> Without prejudice to the rights of members under sections 303 to 308 and sections 310 to 312 of this Act or any other provisions of this Act, the court, on the application of any member, may by injunction or declaration restrain the company from the following-
>
> (a) entering into any transaction which is illegal or *ultravires;*
>
> (b) purporting to do by ordinary resolution any act which by its constitution or the Act requires to be done by special resolution;
>
> (c) any act or omission affecting the applicant's individual rights as a member;

[672] *(2010) LPERP 4592 C.A.*
[673] *Edokpolo & Co Ltd v Sem Edo Wire Ind. Ltd. & Anor (1984) LPELR 1017 (S.C).*
[674] *Edokpolo & Co Ltd v Sem Edo Wire Ind. Ltd. & Anor (1984) LPELR 1017 (S.C).*
[675] *Tika Tore Press Ltd v Abina (1973) 4 S.C. 63.*
[676] s. 300(a); (b); (c); (d); (e); (f) CAMA 1990.

(d) committing fraud on either the company or the minority shareholders where the directors fail to take appropriate action to redress the wrong done;

(e) where a company meeting cannot be called in time to be of practical use in redressing a wrong done to the company or to minority shareholders; and,

(f) where the directors are likely to benefit, or have profited or negligence or from their breach of duty.

The above provision contained the exceptions where an individual member may seek redress in a court. Specifically, section 300(c) of the CAMA 1990 above is the exception that allows an individual member to seek the enforcement of a remedy in court. The method or procedure of how to enforce the remedy shall be examined subsequently in this chapter.

4.4 Effects of Failure to Serve Notice of Meeting

The Federal High Court of Nigeria in *Prince Adebayo Ayodele & Anor v. Form Nigeria Ltd*[677] declared that the meeting of the company was null and void because no notice was given to the plaintiff. In the Malaysian case of *Aik Ming (M) Sdn Bhd v. Chang Ching Chuen*,[678] Gopal Sri Ram JCA opined "Unless the article of a company provides otherwise, a meeting of the board of directors is not valid unless reasonable notice of the meeting and the relevant agenda is given to the directors." In the above case no evidence show that notice was served. The meeting was therefore void. Failure to serve notice in this case could not be regarded as a mere irregularity that is curable because, at the date of the meeting, the plaintiffs not only had a majority of voting power on the board but also on the floor of any general meeting that might have been considered. The business conducted at the subsequent meetings of the board were also void.

[677] *(1974) 1 FRCR 174.*

[678] *(1995) 2 MLJ 59* a similar decision was reached per Chukwuma Eneh JCA, in the Nigerian case *of Baffa v. Odili (2001) 15 NWLR (Pt. 737) 709 at 740.*

In another Malaysian case of *Jerry Ngiam Swee Beng v. Abdul Rahman bin Mohd Rashid & Anor*,[679] the court held that the validity of a meeting depends on proper service of notice. In the instant case, the meeting was null and void because there was nothing to prove that proper notice of the meeting has been served on the plaintiffs. The notice sent to Jerry Ngiam by 'fax' a day before the meeting was not a proper notice and so the meeting failed. The above decisions confirmed that failure to give notice of meeting renders the meeting null and void, as well as any resolution taken at the meeting. However, there are certain exceptions under the CAMA 1990 and CA 2016 where failure to serve notice would not invalidate the meeting, which may be due to accidental omission/failure.

4.4.1 Accidental Omission

In the English case of *Board of Management of Trim Joint District School v. Kelly*,[680] Lord Atkinson maintained that "The word 'accident' was to be taken in its ordinary and popular sense and be construed as what an ordinary man on the street would understand it to be." The CAMA 1990 made provision regarding circumstances where the management of a company would be absolved from liability for default in serving notice of meeting. It provides:[681]

> Failure to give notice of any meeting to a person entitled to receive it shall invalidate the meeting unless such failure is an accidental omission on the part of the person or persons giving the notice. Failure to give notice to a person entitled to it due to a misrepresentation or misinterpretation of the provisions of this Act, or of the articles, shall not amount to an accidental omission for the purposes of the foregoing subsection.

[679] *(2003) 6 MLJ 448 at 450.*
[680] *(1914) AC 667.*
[681] s. 221(1) & (2) CAMA 1990.

In a related provision, the CAMA 1990 provides that failure to give notice of the board of directors meeting shall invalidate the meeting.[682] In Malaysia for example, the CA 2016 has similar provision with CAMA 1990 relating to accidental omission. The CA 2016 provides that accidental omission to serve notice or the non-receipt of the notice by a member of a company shall not justify the invalidation of a meeting.[683] It was argued that accidental omission to give notice of meeting undermines the fundamental right of a member to receive notice of meeting and to vote at the meeting.[684] However, even with the above exception absolving the management from liability, there is "statutory validation."

4.4.2 Statutory Validation of a Meeting

Thus, statutory validation of a meeting may be made by a court where a corporate act fails to comply with the requirement of the law. However, the court must be satisfied that no substantial injustice would be done because of the validation order.[685] This is not available under the CAMA 1990. There is provision for statutory validation under CA 2016 of Malaysia. The section provides:[686]

> No proceeding under this Act shall be invalidated by any defect, irregularity or deficiency of notice or time unless the Court is of the opinion that substantial injustice has been or may be caused thereby which cannot be remedied by any order of the Court. The Court may if it thinks fit make an order declaring that the proceeding is valid notwithstanding any such defect, irregularity or deficiency.

[682] s. 266(3) CAMA 1990.
[683] s. 316(6) CA 2016.
[684] Mohamad and Yee, fn. 39.
[685] Thomas David and Gregg McConnell, "Procedural Irregularities and Meetings-Comfort for Company Secretaries," *Keeping Good Companies* 62.9 (2010): 516; Alexander F.H Loke, Rights, Duties and the Validation of Irregularities, *Singapore Academy Law Journal* (2011) 23, 838.
[686] s. 582(1) CA 2016; *Nyuk Fong & Ors v. Pan Global Equities Sdn Bhd (1991) MLJ 152* where s. 355 of the CA 1965 which is impari materia with S. 582 CA 2016 was applied.

Section 355(1) & (2) of the previous CA 1965 now section 582(1) CA 2016 recognised validation of irregularities. There are various pronouncements by the Malaysian court on statutory validation of irregularities. These cases include *Aik Ming (M) Sdn Bhd v. Chang Ching Chuen;*[687] *Jerry Ngiam Swee Beng v. Abdul Rahman bin Mohd Rashid & Anor*[688] among others. For example, in Aik Min's case mentioned above, the court maintained that, before a validation is made, the court examines the justice of a case rather than its prejudice on the other party. If the validation order would not occasion injustice to the injured party, in this case, a member who has not been served with the notice, then the court would be woulding to validate the meeting. Similarly, in *Jerry's* case mentioned above, it was held that the court must be satisfied that no injustice would be occasioned as a result of the validation order. "The exercise of discretion in this regard is guided by the gains and losses that were involved in the case. The burden rest on the party seeking to validate the meeting to prove that no substantial injustice would be occasioned to the company or any member of the company." In contrast, a party seeking invalidation order has the burden of prove that he has suffered substantial injustice.[689] As mentioned above, there is no such provision under the CAMA 1990.

4.5 Power of Court to Order Meeting

The power to call a meeting of a company is vested with the management. However, there are circumstances where a court may give an order calling for a meeting of a company. In this regard, the CAMA 1990 provides[690] that where it is 'impracticable'

[687] *(1995) 2 MLJ 59.*
[688] *(2003) 6 MLJ 448 at 450.*
[689] Koh, Pearlie, "Legislation and Case Notes: Irregularities in Procedure--Reconsidering Section 392," (2012).
[690] s. 223(1) CAMA 1990.

to call a meeting of a company as prescribed by the articles or this Act, the court may, on its own volition or on the application of any director or of any member having the right to vote at the meeting order a meeting to be called, and conducted in the manner directed by the court. This provision pointed out the circumstance where a court may order for calling a meeting. However, it must be established that it is impracticable to call the meeting. The section also provides[691] that the court may direct that one member present at the meeting in person or by proxy may apply to the court to take a decision which shall bind all other members.

The above provision is an exception where a single member of a company may form a quorum and pass a valid resolution that binds all other members. The same provision is contained under CA 2016[692] as relates to the power of court to order for calling of member's meeting. In the English case of *Re-El-Sombrero Ltd*[693] two members holding 5% of the voting right each had not been attending meeting merely to prevent the other member holding 90% of the voting right from dismissing them from the board of directors. The court, however, is not willing to allow the adoption of a resolution that would go contrary to what has been agreed by the parties. Wynn-Parry J opined:

> It is conceded that the word 'impracticable' is not synonymous with the word 'impossible.' It appears to me that the question necessarily raised by the introduction of the word 'impracticable' is merely thus, examine the circumstances of a particular case and answer the question whether as a practical matter, the desired meeting of the company can be conducted, thereby being no doubt, of course, that it can be convened and held.

[691] s. 223(2) & (3) CAMA 1990.
[692] s. 314(1)-(5) CA 2016.
[693] *(1958) Ch 900*; the decision was followed by the Supreme Court of Nigeria in *Okeowo & Ors v. Milgliore & Ors (1979) 11 SC.*

It is necessary to reiterate that before a court makes order calling for the meeting, it must be satisfied that it is impracticable to call the meeting in all possible ways adopted by the company for calling a meeting or the meeting is impracticable to be conducted as prescribed by the article.[694] In the Malaysian case of *Foo Tong Eng v. Po Gun Suan,*[695] it was held that the court would order for calling of the general meeting where the effect of non-attendance was to paralyse the company and expose it to the penalties of non-compliance with the law. The burden lies on the applicant to show the likelihood of loss being occasioned to the company. On the one hand, where an application for an order of court to call meeting was made by a member of a company, such a member must establish that he is a registered member of the company as at the material time of the application. This is what gives him the *locus standi* to apply for an order of court to call a meeting. In the Nigerian case of *Contract Resources (Nig) Ltd v. Wende*,[696] Salami JCA (as he then was) held that the respondent in the instant case was unable to show that he is a member of the company and therefore he cannot be said to have the *locus standi* to maintain such application.

4.6 Failure of Notice to State the Right to Appoint Proxy

In this regard, section 230 of the CAMA 1990 recognised the right of a member to appoint a someone to represent him as his proxy where he would not be attending the meeting. In this regard, the CAMA 1990 provides:[697]

> In every case in which a member is entitled, pursuant to section 230 of this Act, to appoint a proxy to attend and vote instead of him. The notice shall

[694] *Leong Ah Hong v. Hup Seng Co Ltd (1963) MLJ 164.*
[695] *(1982) 1 MLJ 337.*
[696] *(1998) 5 NWLR (Pt. 549) 243.*
[697] s. 218(4) CAMA 1990.

> contain with reasonable prominence, a statement that the member has the right to appoint a proxy to attend and vote instead of him and that the proxy need not be a member of the company. If default is made in complying with this subsection as respects any meeting, every officer of the company who is in default shall be guilty of an offence and liable to a fine not exceeding ₦500.

The CAMA 1990 further provides:[698]

> An error or omission in a notice with respect to the place, date, time or general nature of the business of a meeting shall not invalidate the meeting, unless the officer of the company responsible for the error or omission acted in bad faith or failed to exercise due care and diligence. Provided that in the case of accidental error or omission, the officer responsible shall effect the necessary correction either before or during the meeting.

The above provision made it clear that the nature of error or omission that can make the court to invalidate a meeting is such that was acted in bad faith, or such omission was done without exercising due care and diligence. Furthermore, the CAMA 1990[699] provides:

> In every notice calling a meeting of a company having a share capital, there shall appear with reasonable prominence a statement that a member entitled to attend and vote is entitled to appoint a proxy or, where that is allowed, two or more proxies, to attend and vote instead of him, and that a proxy need not be a member and if default is made in complying with this subsection as respects any meeting, every officer of the company who is in default shall be guilty of an offence and liable to a fine of ₦250.

The above section 230(2) of the CAMA 1990 and 218(4) of the CAMA 1990 earlier mentioned share some similarities since both sections made provision that notice of the meeting shall reasonably inform a member of his right to appoint a proxy, in the event he is not attending the meeting. The two sections may be distinguished in the following ways: While section 230(2) provides a maximum penalty of ₦500.00 which

[698] s. 218(5) CAMA 1990.
[699] s. 230(2) CAMA 1990.

is equivalent to RM5.55 at the exchange rate of ₦90/RM1, section 218(4) only provides a penalty of ₦250.00 equivalent to RM2.77. On the one hand, section 218(4) was not particular about the type of company involved while section 230(2) specifically refers to a company having share capital. Similarly, section 230(2) of the CAMA 1990 recognised the right of a member to appoint more than one proxy where it is allowed while section 218(4) was silent on the number of proxies. Another provision under the CAMA 1990[700] that seeks to protect the right of members is that a fine of ₦500.00 shall be imposed on any officer who wilfully authorised invitation to appoint a proxy only to certain members of the company.

One notable issue is that in all the penalty regarding the fine under the above provisions, the maximum amount of fine is only ₦500.00 which is equivalent to about RM5.55 at the exchange rate of ₦90 to RM1. This penalty of fine is too insignificant when compared to what is obtainable in other jurisdictions.

In Malaysia for example, there is the same requirement that notice of meeting shall state the right to appoint a proxy and failure to do so shall make the officer in default liable to a fine not exceeding RM10,000[701] which is equivalent to ₦900,000.00 at an exchange rate of ₦90 to RM1. By way of comparison, the penalty under the CAMA 1990 which is around RM5.55 equivalent is too insignificant to stand as a penalty when compared to ₦900, 000.00 equivalent under the CA 2016. From the excerpts, Respondent 12 states, "The penalty of ₦500.00 is too small. I would recommend a higher penalty." According to Respondent 13, "The amount is too small as of today, it should be reviewed upward to go in line with what is obtainable in other jurisdictions.

[700] s. 230(4) CAMA 1990.
[701] s. 335(1) CA 2016.

As it is, it can never serve any deterrent." Respondent 6 added, "If we want to be serious, the fine should be much enough to deter you from committing the offence." In the same context, Respondent 14 states:

> *The penalty is not in line with present reality. As it is, it would certainly encourage abuse by corporate managers particularly those that are not prudent. The law should be reviewed to make a heavy penalty on any officer involved, and the penalty should be "personal" to be borne by the officer concerned and not the company.*

4.7 Default in Holding AGM

Since the law recognised holding of AGM, it follows that there should be a way to sanction it in the event of default. In this regard, the CAMA 1990 provides:[702]

> If default is made in holding a meeting of a company in accordance with subsection (1) of this section, the Commission, may, on the application of any member of the company call, or direct the calling of, a general meeting of the company and give such ancillary or consequential directions as the Commission thinks expedient, including directions modifying or supplementing, in relation to the calling, holding and conducting of the meeting, the operation of the company's articles; and it is hereby declared that the directions that may be given under this subsection shall include a direction that one member of the company present in person or by proxy may apply to the court for an order to take a decision which shall bind all the members.

The above provision empowers the Corporate Affairs Commission (CAC) on the application of any member direct for calling of an AGM. The CAC may give such directions including a direction that one member present shall have the right to take a decision that binds all other members. This is an exception to section 232(2) of the CAMA 1990 that generally requires 2/3 of members to form a quorum. The provision of section 213(2) of the CAMA 1990 shall be distinguished with section 223(1) of the

[702] s. 213(2) CAMA 1990.

same CAMA 1990. They both share similarities since they empower a single member to convey a meeting and pass a valid resolution thereat. However, section 223(1) relates to the power of the court to order meeting, and there must be an "impracticable"[703] situation that warrants for court ordered meeting while section 213(2) relates to the powers of the CAC to give direction calling for the meeting. Under section 213(2) above, the term 'impracticable' was not mentioned, before the CAC can order for calling of a meeting.

Regarding the monetary fine, the CAMA 1990 provides:[704]

> If default is made in holding a meeting of the company in accordance with subsection (1) of this section, or in complying with any directions of the Commission under subsection (2) thereof, the company and every officer of the company who is in default, shall be guilty of an offence and be liable to a fine of ₦500. If default is made in complying with subsection (4) of this section, the company and every officer of the company who is in default shall be liable to a fine of ₦25.

The above section imposes a fine of ₦500.00 equivalent to RM5.55 at an exchange rate of ₦90 to RM1, against any officer that defaulted in holding the AGM.

4.8 Enforcement of Remedies

There are various rights available to members under both common law and statutes. It is easier to have the rights been provided, but their enforcement is generally not an easy task. This is because of the general principle of law that only a company can sue to enforce or remedy a wrong. The court is not woulding to interfere in the internal management of a company, provided the majority members of the company can ratify it.[705] In support of the above, Respondent 1 said, "You know the enforcement of

[703] *Re El-Sombrero Ltd. (1958) Ch 900.*
[704] s. 213(5) CAMA 1990.
[705] Amupitan, fn. 248 at 325; *CBN v. Kotoye (1994) 3 NWLR (Pt. 330) 66 at 73 para E.*

remedies is one of the legal problems we have in corporate law in Nigeria. Cases do not go to court because of the ruling in *Harbottle's* case which says the company should carry any wrong against the company."[706] In another word, only the directors could authorise the institution of legal proceedings.[707] In this regard, Respondent 14 states, "Enforceability of remedies in Nigeria is very difficult. Generally, in Nigeria, our court processes are very cumbersome and difficult to go by. As it is, I have not seen cases where shareholders went to court to seek this remedy."[708]

Thus, membership of a company confers certain rights and obligations on a member, which depends entirely on whether the rights are personal or corporate in nature.[709] Both personal and corporate rights are legally protected and cannot be taken away by either the company itself or any group of members in the company.[710] In the Nigerian case of *Globe Fishing Industries Ltd v. Coker,*[711] Olatawura JSC as he then was observed:

> The dividing line between personal and corporate right is very hard to draw. Perhaps the court would incline to treat a provision in the memorandum or article as conferring a personal right on a member only if he has an interest in its observance distinct from the general interest which every member has in the company adhering to the terms of its constitution.

In the English case of *Prudential Assurance Co Ltd v. Newman Industries Ltd,*[712] the court held that both personal and corporate wrong might be asserted in the same proceeding instead of choosing against one another. However, a member may not be

[706] R1 (Lecturer), interviewed by researcher, Jos, Nigeria, November 6, 2016.
[707] *Bokaz (Nig) Ltd v. Anthony Ziregbe & Anor 4 FRCR (1978) 83.*
[708] R14 (Company Director), interviewed by researcher, Lagos, Nigeria, December 10, 2016.
[709] Orojo, fn. 238 at 205.
[710] *Per Jenkin, LJ in Edwards v. Halliwell (1950) 2 All ER 1064 at 1067.*
[711] *(1990) 7 NWLR (Pt. 162) 265* quoting Pennington's Company Law, 4th ed. 588.
[712] *(1981) Ch 257.*

able to recover any loss suffered which reflects the loss allegedly inflicted on the company.[713] For a party to enforce his right, he must act timeously. In the recent Malaysian case of *Mascon Rinota Sdn Bhd & Ors v. Rinota Construction Sdn Bhd*,[714] Varghese George JCA held that the question of delay in filing the petition was of paramount importance in any consideration of the exercise of the court's discretion under section 181 of the CA. In this case, the petition was filed in 2006, about ten years ago after the act complained of took place. The court further held:

> Acting without expediency to protect or further one's right when an alleged breach or violation of such right arose amounted to acquiescence, meaning an acceptance or consent to that situation. The court should deny relief to an interested party who had sat on his rights and accepted tacitly such practices or decisions adopted by the company in its business affairs over time, but who now wished to advance matters related to or arising therefrom as a grievance for relief under section 181 of the CA.

There are various remedies under the CAMA 1990 that allow members to seek redress either against the company. These include personal and representative action, derivative action, remedy against oppressive conduct, investigation of the affairs of a company and winding up, in certain cases. In this study, personal action is the remedy that directly concerns failure to receive notice of AGM since it is viewed a personal right. However, other remedies like the derivative action, remedy for oppressive conduct would also be examined in this chapter because it is sometimes difficult to distinguish between individual and corporate rights, which is the basis for personal and derivative action.

[713] *Johnson v. Gore, Wood & Co (2001) 1 All ER 481 HL.*
[714] *(2016) 4 CLJ 854.*

4.9 Personal Action as a Remedy

Personal action is a form of proceedings that allow a member(s) to institute an action for breach of personal right.[715] In a personal action, a wrong was committed or about to be committed by the company.[716] In this regard, the company is the proper party since the judgement of the court is to be against the company and not in its favour.[717] In a personal action, a member may institute an action in his own name although the wrong committed may have affected the company[718] within the exceptions to the rule in *Foss v. Harbottle*. However, in a situation where the alleged wrong affects both the company as well as the personal right of a member, both derivative and personal action may be instituted against the company. It is left for a member to make a preference on the mode of action to take.[719] The court in *CBN v. Kotoye*[720] added:

> The rule in *Foss v. Harbottle* would not apply to an action instituted to protect the invasion of personal right of an individual member, for in such a situation the wrong ceases to be a wrong to the company, and so it goes beyond the authority of the company, union or association or its majority members to rectify or seek redress in court.

Despite various provisions and judicial decisions to the effect that an individual member may seek redress in court through personal action,[721] many cases in Nigeria failed because of the recognition of the principle in *Harbottle's* case. In the same case of *CBN v Kotoye,*[722] the court went further to held that, "An individual member of a company against whom a harm is one is entitled by the provision of section 6(6)(b) of

[715] Kiser, fn. 315; Magaji, S., Protection of Minority Shareholders under Nigerian Company Law, Master Project Paper, Universiti Utara Malaysia, 2015.
[716] Akintunde Emiola, *Nigerian Company Law* (Ogbomoso Nigeria, Emiola Publishers: 2007), 457.
[717] Amupitan, fn. 238 at 352.
[718] *CBN v. Kotoye (1994) 3 NWLR (Pt. 330) 66 at 78 paras A-B.*
[719] Nelson C. S Ogbuanya, Essentials of Corporate Law Practice in Nigeria (Novena Publishers: 2010), 484.
[720] *(1994) 3 NWLR (Pt. 330) 75-76 paras H.*
[721] R1 (Lecturer), interviewed by researcher, Jos, Nigeria, November 6, 2016.
[722] *1994) 3 NWLR (Pt. 330) 66 at 78 paras A-B.*

the 1979 constitution to seek redress notwithstanding the rule in *Foss v. Harbottle."*

In *FATB v. Ezegbu*,[723] the court held that:

> The action as instituted by the appellants in this case aimed at vindicating individual rights as to their membership of the bank. They have *locus standi* both at common law and as provided by statute to sue for the protection of their rights and to ask for whatever right they should be accorded having paid what they thought was right as their shares in the bank.

On the one hand, a personal action may become a representative action where the action was initiated by one member or more for themselves and on behalf of other affected members whose personal rights were infringed upon.[724] The procedure to file a representative action is usually the method prescribed under the Civil Procedure Rules of the Federal High Court of Nigeria 2009. The significance of adopting a representative action is to make the decision of court binding on all person represented in the suit and to reduce the multiplicity of action over the same wrong committed.[725] In the Nigerian case of *Daniels v. Insight Eng. Co. Ltd*,[726] Onnoghen JCA maintained that in a personal action the defendant must be served personally with the court processes.

It is relevant to point out that the plaintiff in a personal action is the aggrieved member while the defendant is mostly the company that breached its duty to the member. Referring to the provision of CAMA 1990 a member in this regard includes the personal representative of a deceased member and any person that acquires shares in a company either by way of transfer or transmission. Therefore, no personal action

[723] *(1994) 9 NWLR (Pt. 367) 149 at 189 paras H-C.*
[724] See Amupitan, fn. 248 at 353.
[725] *Ibid.*
[726] *(2002) 10 NWLR (Pt. 775) 231.*

could be maintained by a member prior to his registration as a member.[727] Personal action could be maintained for various reasons. Although the list is not exhaustive here, it could be due to the following: infringement of the company's article, breach of personal statutory rights. This include the right of a member to receive notice and participate in the meeting[728] which are the focus in this study. Other personal rights include failure to vote in person or by proxy, failure of a company to admit a proxy duly appointed and denial of any other personal right.[729]

A member can enforce his personal rights that were contained in the article in case they are breached since they are contractual in nature.[730] This can be through exercising personal action as a remedy.[731] Exercising personal action is recognised as one of the exceptions to the principle of law in *Harbottle's* case. It is in line with section 41 of the CAMA 1990 that recognised the article as a contract between the members and the company. Therefore, a member can enforce it. In *Pender v. Lushington,*[732] a member can maintain an action to enforce his voting right as contained in the article even though the rule in *Foss v. Harbottle*. In *Pender's* case the court held that in enforcing a personal right a member needs no consent or approval of other member to institute such action. In such instance, a member(s) institutes the action "in their own interest to protect from invasion their own individual rights as members."[733] However, Respondent 10 mentioned:[734]

> *It is only the company that can institute an action in its name. However, where members have been wronged, a member may institute an action in*

[727] Dissenting view held by Ayoola JCA in *FATB v. Ezegbu (1994) 9 NWLR (Pt. 367) 191 paras B-C.*
[728] *Associated Registered Engineering Contractors Ltd v. Amaye (1986) 3 NWLR (Pt35) 653;* Nelson, fn. 719 at 474-475.
[729] Nelson fn. 719 at 474-475.
[730] *Elufioye v. Halilu (1993) 6 NWLR (Pt. 301) 570 at 608-609.*
[731] *FATB v. Ezegbu (1994) 9 NWLR (Pt. 367) 191 paras B-C.*
[732] *(1877) 6 ChD 70-80.*
[733] *Edwards v. Halliwell (1950) 2 All ER 1064 at 1067.*
[734] R10 (Company Secretary), interviewed by researcher, Kano, Nigeria, October 24, 2016.

> *court to claim remedies. In practice it is difficult for members to institute an action because when they go to court, the court would say they don't have right as an individual to claim remedies or at times, they would spend too much money to institute an action while the remedy they would get is very minimal.*

The right to receive notice of meeting along with all the relevant documents is recognised under both common law and statute.[735] In the Nigerian case of *Pan Atlantic and Forwarding Agencies Ltd v. Aleyi Dieno,*[736] the court held that the right to receive proper notice of meeting and to have the meeting held with the proper quorum is an individual right and not a corporate right. On the one hand, personal action could be distinguished from derivative action in that while the plaintiff in a personal action acts for himself and other members, in a derivative action, the plaintiff represents the company. On the other hand, the plaintiff in a personal action is only entitled to a declaration or injunction whereas a plaintiff in derivative action may be entitled to monetary judgement.[737] A member always has the right to sue where his personal right has been infringed upon.[738] However, in the recent Malaysian case of *Rinota Sdn Bhd & Ors v. Rinota Construction Sdn Bhd*,[739] the court held that:

> There is a well-established principle in corporate law that bars a shareholder from directly bringing or relying on losses of the company to seek relief for himself unless by way of derivative action. This was known as the 'reflective loss principle. The principle applied where the shareholder's alleged wrong was merely a reflection of the company's loss, such as where the shareholder's loss was a diminution in the value of his shares as a result of those alleged wrong to the company. In such situations, recovery by the shareholder of the loss he suffered was precluded, as this would mean making the wrongdoer liable for the same wrong twice over.

[735] *Borland Trustee v. Steel (1901) 1 Ch 279, 288; Tika Tore Press Ltd v. Abina & Ors (1973) 1 NMLR 220;* s. 219 CAMA 1990
[736] *Suit No. CA/L/106/84of 15th January 1985 (Unreported).*
[737] Akintunde, fn. 716, at 458.
[738] Kiser, fn. 310 at 384; *Abubakri v. Smith (1973) 1 All NLR 730*; Pennington, Company Law, 4th ed. (1979) 587.
[739] *(2016) 4 CLJ 854 para 24 & 25.*

Corporate rights, on the one hand, are rights that can be enforced by individual members and therefore, unlike personal rights a member would be bound by the decision of majority members, though he may participate in the decision making.[740] One thing that made the enforcement of corporate rights virtually worthless is that such rights could only be enforced where the company does not ratify the wrong committed or the irregularities. This signifies that in the event where the company ratifies the wrong by a simple majority then no action could be maintained against the company.[741]

4.9.1 Personal and Representative Action Under the CAMA 1990

The CAMA 1990 in this regard provides, "Where a member institute a personal action to enforce a right due to him personally, he shall not be entitled to any damages but a declaration or injunction to restrain the company and the directors from doing a particular act."[742] In the Malaysian case of *Mahesan & Ors v. Ponnusamy & Ors,*[743] the plaintiff sought a declaration that the meeting of the company be declared null and void due to insufficient notice and that an injunction be granted restraining the defendants from acting on the resolution passed at the meeting. The court declared that the allotment of shares at the meeting was null and void because the company failed to observe the requirement of notice as contained in the article. The court further held that where the memorandum and article is silent, then recourse shall be made to previous practice. In this case, notice of five days would be sufficient. The above remedy under section 301(1) of the CAMA 1990 entitled a member to either an injunction or declaration as a remedy. However, a member would not be entitled to

[740] Orojo, fn. 238 at 206.
[741] Amupitan, 248 at 112 at 354.
[742] s. 301(1) CAMA 1990.
[743] *(1994) 3 MLJ 312.*

damages in a representative action. He may be entitled to an injunction to restrain the company and its directors from doing a particular act or a declaration regarding an act in question.[744]

In practice, where members decide to institute a personal action in a representative capacity, the members nominate persons whose name shall reflect in the suit after fulfilling the requirement to file representative action. Members are required in practice to deposed to an affidavit that they were all affected and that they have obtained the leave of court to sanction their application to file a representative action.[745] According to Pennington, "The plaintiff in such an action does not sue in his own right alone but on behalf of himself and all his fellow members other than those if any, against whom the relief is sought."[746] In the Nigerian case of *Otuguor Ogamioba & Others v. Chief D. O. Oghene & Others*[747] Taylor, FJ stated, a representative action may be filed where there is a common interest and a common grievance if the relief sought would benefit all the plaintiffs. Although a member is not entitled to damages, the court may award costs to a member, whether action succeeds or not.[748] In any proceedings by a member under section 300 of this Act, the court may, if it thinks fit, order that the member shall give security for costs.[749] Thus, the award of cost in this section is at the discretion of the court.

[744] s. 301(2) CAMA 1990.
[745] Nelson fn. 719 at 484.
[746] Pennington, fn. 738 at 589.
[747] *(1961) All NLR 441.*
[748] s. 301(3) CAMA 1990.
[749] s. 301(4) CAMA 1990.

4.10 Derivative Action as a Remedy

Before citing the provision of the CAMA 1990 as relates to derivative action, it is important to highlight on what derivative action entails as a remedy. Thus, referring to the English case of *Wallersteiner v Moir*[750] Lord Denning MR as he then was, said:

> It is a fundamental principle of our law that a company is a legal person, with its own corporate identity, separate and distinct from the directors or shareholders, and with its own property rights and interests to which alone it is entitled. If it is defrauded by a wrongdoer, the company itself is the one person to sue for the damage. Such is the rule in *Foss v Harbottle (1843) 2 Hare 461.* The rule is easy enough to apply when the company is defrauded by outsiders. The company itself is the only person who can sue. Likewise, when it is defrauded by insiders of a minor kind, once again the company is the only person who can sue. But suppose it is defrauded by insiders who control its affairs by directors who hold a majority of the shares, who then can sue for damages? Those directors are themselves the wrongdoers. If a board meeting is held, they would not authorise the proceedings to be taken by the company against themselves. If a general meeting is called, they would vote down any suggestion that the company should sue themselves. Yet the company is the one person who is damnified. It is the one person who should sue. In one way or another some means must be found for the company to sue. Otherwise the law would fail in its purpose. Injustice would be done without redress.

The above dictum points out the need for a company to seek redress against the management otherwise it would be as if there is no redress at all. Thus, a derivative action has been described as an exception to the principle of majority rule whereby minority members of a company could maintain an action for or on behalf of the company. [751] In the Nigerian case of *Agip (Nig.) Ltd v. Agip Petroli Int'l*[752] the court described derivative action as a suit filed by a shareholder on behalf of a company, against a third party. The third party may be an insider of the corporation, such as the

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750 (No 2) (1975) QB 373.

751 Bamigboye, Mike Oluwaseyi, "The True Exception to the Rule in Foss v. Harbottle: Statutory Derivative Action Revisited." (2016); *Prudential Assurance Co Ltd v Newman Industries Ltd (No 2) (1982) 1 Ch 204 at 210.*

752 *(2010) 5 NWLR Pt 1187 P. 225-428.*

directors or executive officers. Based on the case cited above, the third party could be the management of the company.

However, in *Omisade v. Akande,*[753] the Supreme Court of Nigeria held that "Derivative action is a procedural device by means of which on the principle of equity a relief, such as restitution of unjust enrichment by its director, is sought on behalf of a company." Derivative action as a remedy was put in place to prevent multiple suits against a company because where every member is allowed to institute an action, there may be a danger to the company being overburdened with actions that would affect its business; that the company felt *kindness might kill it.*[754] In another word, derivative action serves as an avenue that protects and checkmates the activities of those in control of the company.[755] Hence it is derived from the right of the company to sue and be sued.[756]

4.10.1 Application for Leave to Commence Derivative Action

This part deals with the requirements in commencing a derivative action under the Nigerian CAMA 1990. The section provides:[757]

> Subject to the provisions of subsection (2) of this section, an applicant may apply to the court for leave to bring an action in the name or on behalf of a company, or to intervene in an action to which the company is a party, for the purpose of prosecuting, defending or discontinuing the action on behalf of the company. No action may be brought and no intervention may be made under subsection (1) of this section, unless the court is satisfied that:

[753] *(1987) LPELR 2639 (S.C).*
[754] *Prudential Assurance Co Ltd v Newman Industries Ltd (No 2) (1982) 1 Ch 204 at 210.*
[755] Nelson, fn. 719 at 482; Magaji, S., Protection of Minority Shareholders under Nigerian Company Law, Master Project Paper, Universiti Utara Malaysia, 2015.
[756] Gower, Modern Company Law, 587.
[757] s. 303(1) & (2); S. 303(2)(a), (b), (c) CAMA 1990.

(a) the wrongdoers are the directors who are in control, and would not take necessary action;
(b) the applicant has given reasonable notice to the directors of the company of his intention to apply to the court under subsection (1) of this section if the directors of the company do not bring, diligently prosecute or defend or discontinue the action;
(c) the applicant is acting in good faith; and
(d) it appears to be in the best interest of the company that the action be brought, prosecuted, defended or discontinued.

The above are the statutory requirements for leave of court to file a derivative action by the applicant. In *Agip Nig. Ltd v. Agip Petroli Int'l*[758] the court held that the requirement for leave from court is mandatory and cannot be waived. The purpose of seeking leave of court to commence a derivative action is to enable the court to consider the application and scrutinise all the documents in support of the application. Similarly, it allows the court to exhaustively review the grounds for bringing the application in order to ensure that there is merit in the application before directors are invited to oppose the application or the action itself.[759] On the one hand, the Companies Proceedings[760] set out the basic requirement to file derivative actions which are similar to those laid down under section 303(1) & (2) above. The rules give details procedure to be followed in filing derivative action, which is by way of originating summons and verifying affidavit supporting the application.

In the recent Malaysian case of *Ranjeet Singh & Anor v. Zavarco Plc & Ors,*[761] Wong Kian Kheong JC held that there is nothing that prevents the court from entertaining double or multiple derivative actions where the justice of the matter demands. Otherwise, injustice would be occasioned without redress. The court further held:

[758] *(2010) 5 NWLR Pt 1187 P. 225-428*.
[759]Kunle Aina, "Strategies for Enforcing Shareholder Rights in Corporate Governance in Nigeria," https://www.academia.edu/7583449/ (accessed June 17, 2016).
[760] Rule 2(1) & (2) Companies Proceedings Rules 1992.
[761] *(2016) 2 CLJ 975.*

> Double and multiple derivative actions may prevent a wrongdoer from benefitting from his or her own wrongdoing. There is no any requirement under the Malaysian company law that the permission of the English High court should be sought and obtained before filing a derivative action. In other word, our CA has no provision equivalent to UK Act. Nor is there any Malaysian case that struck out a suit based on the UK Act. The common law derivative suit against companies incorporated in Malaysia has been expressly preserved by s. 181A (3) of the CA. There is no requirement for leave of Malaysian court under s. 181(3) of the CA for the plaintiffs to file a derivative suit against Zavarco Bhd.

4.10.2 Proper Person to Apply for Leave to Commence Derivative Action

In this regard, section 309 of CAMA 1990 made provision regarding persons that can apply for a leave of court to file derivative action. The section provides that a proper person includes current and former registered/beneficial owner of shares; director/officer of a company; CAC; and any person the court thinks is a proper party. Although the above provision does not limit the proper parties to the members alone, this study focuses on members. It must be noted here that where a member participates in committing the wrong against the company and minority shareholders cannot make such application.[762] In other words, this has to do with the issue of *locus standi* to institute a derivative action. Various decisions of Nigerian court emphasised on the fact that the applicant must come within the above stated persons otherwise the application may not succeed.[763] It is reasonable to state hat the law restricts a shareholder that involved in the wrongdoing from filing a derivate suit was to ensure that only members against whom wrong was committed can maintain a derivation action. In another word, only a party with clean hands can make such application.[764]

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[762] *Prudential Assurance Co Ltd v Newman Industries Ltd (1979) 3 All ER 507.*
[763] *Adenuga v Odumeru (2002) FNWDR (Pt. 821) 163, Central Bank of Nigeria v Kotoye (1994) 3NWLR (Pt. 338) 66.*
[764] Christian Chin, Minority Shareholders and Derivative Action. http://www.lawgazette.com.sg/2000-10/Oct00-focus3.htm (accessed May 5, 2016).

4.10.3 When Can Members Institute Derivative Action?

In *Agip Nig. Ltd v. Agip Petroli Int'l*[765] the court stipulates certain conditions for instituting a derivative action. The conditions are basically on the commission of wrongful conducts that:

> Amounts to a fraud on the minority members of a company and the wrongdoers are in control of the company; activities by the directors, officers, and employees causing harm to the company; breach of duty that cannot be ratified by ordinary resolution; or is outside the company's objects and cannot be ratified under any event.

Thus, where such wrongful conduct does not amount to a fraud or where the general meeting can ratify the wrongful act, members cannot maintain a derivative action. The requirement to commence derivative action must be based on fraud.[766] It is, however, difficult to have a unanimous view as to what constitutes a fraud, to warrant the exercise of this remedy. The word "fraud" in this context does not have a single or unanimous definition. It is said to involve "unconscionable conduct against minority shareholders by those in control."[767] The Supreme Court of Nigeria in *Yalaju-Amaye v A.R.E.C*[768] gave a broader definition of the word fraud as any act which may result in a violation of fair dealing, or misuse of confidence or unacceptable conduct. In *Alhaji M. U Gombe v P. W. (Nigeria) Limited & Ors*[769] the court was of the view that:

> The proper party to complain about fraud is the company itself. The rule in the case of *Foss v. Harbottle*, which precludes a minority shareholder or shareholders from suing where there is an irregularity in the internal management of a company that is capable of being confirmed by a simple majority of the shareholders, clearly applies to this case. For that reason, the Federal High Court could not interfere at the suit of the appellant as a minority of the shareholders. Admittedly, there are exceptions to the rule

[765] *(2010) 5 NWLR Pt 1187 P. 225-428.*
[766] s. 300(d) CAMA 1990.
[767] Nelson, fn. 719 at 475; Magaji, S., Protection of Minority Shareholders under Nigerian Company Law, Master Project Paper, Universiti Utara Malaysia, 2015.
[768] *(1992) 4 NWLR (Pt. 145) 422 SC 63.*
[769] *(1995) LPELR 1330 (S. C).*

> in *Foss v. Harbottle* which do enable a minority shareholder to sue where there is a fraud on the majority shareholders.

The above case pointed out the difficulties faced by minority shareholders in seeking leave to file derivative action. This because, the court still considers the general provision under section 299 of CAMA 1990 which recognised the company as the legal person to remedy any wrongdoing. In granting remedies, the Federal High Court of Nigeria is constitutionally vested with exclusive jurisdiction on matters relating to affairs of companies and administration of the CAMA 1990.[770] The court is empowered to grant both general and specific reliefs upon successful derivative actions set out below:[771]

> In connection with an action brought or intervened under section 303 of this Act, the court may, at any time, make any such order or orders as it thinks fit.
>
> Without prejudice to the generality of subsection (1) of this section, the court may make one or more of the following orders, that is an order-
>
> (a) authorising the applicant or any other person to control the conduct of the action;
> (b) giving directions for the conduct of the action;
> (c) directing that any amount adjudged payable by a defendant in the action shall be paid, in whole or in part, directly to former and present security holders of the company instead of to the company;
> (d) requiring the company to pay reasonable legal fees incurred by the applicant in connection with the proceedings.

The above provision shows that, although the court has wide powers regarding derivative action, the court is not likely to restrain the management at the time of filing application for leave to commence derivative action.[772] Reisberg argued that, there should be a compulsory requirement under the law that a company shall be asked to

[770] s. 251 of the Constitution Federal Republic of Nigeria 1999 (as amended).
[771] s. 304(1) & (2); 304(2), 304(2)(a), (b), (c), (d); *Agip (Nig.) Ltd v Agip Petroli Int'l (2010) 5 NWLR Pt 1187 P. 225-428.*
[772] s. 306 CAMA 1990.

pay the cost of a derivative action as well as a reward to the plaintiff from the proceed of a successful derivative action.[773]

4.11 Remedy for Oppressive Conduct

There is no definition of the term 'oppressive conduct' under the CAMA 1990. However, in the English case of *Scottish Cooperative Wholesale Society Ltd v Meyer,*[774] the court used a dictionary meaning of the term, which means *"*burdensome, harsh and wrongful." In *Aspek Pipe Co (Pty) Ltd v Mauerberger,*[775] oppressive conduct was said to mean departing from the standards of fair play and a violation of the conditions of fairness which every shareholder that entrusted his money to a company can rely on. In the Nigerian case of *Ogunade v. Mobile Films (W. A) Ltd.*[776] Karibi-White maintained, "The oppression must be harsh, burdensome and wrongful and must represent a consistent pattern of conduct internationally directed at the oppressed minority over a period of time." In *Ephraim F. Faloughi v Haniels Wouldiams & Ors,*[777] the court acknowledged that what amounts to oppressive conduct is determine based on the fact of each case. However, it must be such that amounts to fraud on minority shareholders or a violation of the provision of company's constitution or abuse of powers by majority shareholders. The UK Law Reform Commission recommends that the exclusion of a member from the management of a company may

[773] A Reisberg, "Funding Derivative Actions: A Re-Examination of Cost and Fees as Incentives to Commence Litigation," *Journal of Corporate Law Studies,* vol. 4,2 (2004): 345-383.
[774] *(1959) A.C. 324 H.L.*
[775] *(1968) 1 SA 517 at 525H-526E.*
[776] *(1976) 2 FRCR 101.*
[777] *(1978) 4 FRCR 31.*

be termed an unfairly prejudicial conduct, although it is a rebuttable instance that can be set aside by presenting evidence to the contrary.[778]

In Nigeria, neither the CAMA 1990 nor judicial decisions set out particular conducts which are termed "oppressive or unfairly prejudicial," each case is determined based on the fact and circumstances surrounding it.[779] The scope of protection against oppressive conduct is extended not only to actions that occurred. It may be applied where such oppression is likely to occur.[780] Thus, oppression as a member's remedy was argued to be the most frequently used in corporate law.[781] Members have the right to file a petition where the business of the company or of a related person is being or has been conducted in a manner that oppressed or prejudiced their interest.[782]

4.11.1 Proper Person to Apply for Relief Against Oppressive Conduct

The CAMA 1990[783] provides for certain categories of a person having *locus standi* to file a petition before Federal High Court of Nigeria.[784] The section[785] provides:

> An application to the court by petition for an order under section 311 of this Act in relation to a company may be made by any of the following persons:
>
> (a) a member of the company;
> (b) a director or officer or former director or officer of the company;
> (c) a creditor;
> (d) the Commission; or

[778] Sandra K. Miller, "How should UK & US Minority Shareholder Remedies for Unfairly Prejudicial Conduct be removed?" *American Business Journal*, vol. 36 Iss 4 (1999): 579-632.
[779] Legal Remedies for Oppressed Shareholders, an Overview of Section 205 Companies Act. http://www.pearse-trust.ie/ (accessed May 12, 2016).
[780] *Grancy Property Ltd v Manala (2013) ZASCA 57.*
[781] Ian M. Ramsay, "An Empirical Study of the use of the Oppression Remedy," *Australian Business Law Review*, vol. 27 (1999): 23.
[782] Roodt Inc, The Oppression Section of The Companies Act Provides the most Important Statutory Protection of Shareholders' Rights, 2013. http://www.mondaq.com/ (accessed May 12, 2016).
[783] s. 310(1) CAMA 1990
[784] Nelson, fn. 719 at 478; Magaji, S., Protection of Minority Shareholders under Nigerian Company Law, Master Project Paper, Universiti Utara Malaysia, 2015.
[785] s. 310(1); S. 310(1)(a)-(e) CAMA 1990.

(e) any other person who, in the discretion of the court, is the proper person to make an application under section 311 of this Act.

From the above provision, this remedy is not exclusively limited to members as outlined by the court in the case of *Wilson v Okeke.*[786] Directors equally can petition for this remedy, though is not always practicable since they are in control of the company.[787] However, this study emphasises on the members. A member that could file a petition under the above section was clearly explained by the court in *Wilson's* case cited above to includes the personal representative of a deceased member;[788] and any person who became entitled to the shares by means of transfer or transmission.[789] The above provision explained that the right of a member to seek redress to extends to his personal representatives or any person legally entitled to those shares either by way of transfer[790] or transmission upon the death of a member.[791]

4.11.2 Grounds Upon Which Reliefs Are Sought

The rational for setting out grounds upon which a petition is founded was basically to ensure that the remedy is not abused.[792] The CAMA 1990 stipulates the grounds upon which application relief on unfairly prejudicial conduct would be made. This depends primarily on the person making such application, either as a member, by the CAC or by a director, creditor or any other person the court considered as a proper person. In

[786] *(2011) 3 NWLR Pt 1235 P. 421-635.*
[787] Jackwell Feris, Relief from Oppressive Conduct. http://www.bbrief.co.za/resources/articles/relief-from-oppressive-conduct (accessed April 28, 2016).
[788] s. 310(2)(a) CAMA 1990.
[789] s. 310(2)(b) CAMA 1990.
[790] s. 154 CAMA 1990. Fundamentals of Shares and Share Capital. https://tennygee.wordpress.com/2013/10/17/fundamentals-of-shares-and-share-capital/ (accessed April 28, 2015).
[791] s. 155 CAMA 1990.
[792] Azu, E.U, Examination of Recent Trends in Corporate Governance as it Affects the Majority Rule and Minority Protection, *International Journal of Advanced Legal Studies and Governance,* 1 no. 1, (2010)85.

this study, only right of a member and the CAC to petition on the above stated ground shall be examined. Thus, a member may petition the court that the affairs of the company are conducted in a way that oppressed or unfairly prejudiced the member(s) or is likely to oppressed or prejudiced the interest of the member(s).[793] The CAC in the exercise of its powers may also petition the court where the affairs of a company are conducted or are likely to be conducted in a way that oppressed or likely to oppressed or prejudiced member(s).[794]

The Supreme Court of Nigeria in *Williams v Williams*[795] held that a petitioner to succeed must prove oppressive and prejudicial act. Otherwise, the petition would fail, and the court would readily have dismissed same for lacking merit. The court in the same case of *Williams'* case above, it was held that for a petition to succeed, the act or omission must be a continuous oppression. In another word, the conduct must affect the petitioner as a member of the company. The above decisions appeared to limit the exercise of this remedy since the requirement to establish cases of oppressive or prejudicial conduct is somehow a difficult burden. Accordingly, where a member can prove that he is being oppressed by the company as a result of not receiving notice or voting, he can file a petition on that ground.

4.11.3 Powers of the Court

The court after hearing a petition and is satisfied that the petition is justified[796] may make one or more of the following orders[797] which shall be seen below:

(a) that the company be wound up;
(b) for regulating the conduct of the affairs of the company in future;

[793] s. 311(2) (a) CAMA 1990.
[794] s. *311(2) (c) CAMA 1990.*
[795] *(1995) 2 NWLR (Pt. 375) 1.*
[796] s. 312(1) CAMA 1990.
[797] s. 312(2)(a)-(j) CAMA 1990.

(c) for the purchase of the shares of any member by other members of the company;
(d) for the purchase of the shares of any member by the company and for the reduction accordingly of the company's capital;
(e) directing the company to institute, prosecute, defend or discontinue specific proceedings, or authorising a member or the company to institute, prosecute, defend or discontinue specific proceedings in the name or on behalf of the company;
(f) varying or setting aside a transaction or contract to which the company is a party and compensating the company or any other party to the transaction or contract;
(g) directing an investigation to be made by the Commission;
(h) appointing a receiver or a receiver and manager of property of the company;
(i) restraining a person from engaging in specific conduct or from doing aspecific act or thing;
(j) requiring a person to do a specific act or thing.

The above are the powers of the court upon successful petition. However, it is pertinent to point out that, the first order relating to winding up or dissolution of the company[798] may not suit the best interest of members and even the company.[799] This is because members would generally have less benefit where a company is wound up upon the petition of a member. Though there is nothing that prevents the court from making such order if a member could establish his case.[800] In fact, the court upheld winding up order in the case of *Hillam v Ample Source International.*[801] Winding up order was amongst the reason that prompted for the amendment of the Old Companies Act, 1968 (that was applicable in Nigeria) to have an alternative remedy [802] since the effect of winding up is not favourable to members in most cases. Members are not entitled to any award of damages; even where the petition is successful.[803] However, the court

[798] Obozuwa Enikeozuwa, Minorities Shareholders Rights in the Case of Oppression. http://www.academia.edu/ (accessed May 12, 2016).
[799]Akintunde, fn. 716 at 468.
[800] Kate French and Amy Stewart, Oppressed minority shareholders and appropriate relief - Is winding up a solvent company an extreme step? 2012. http://www.holdingredlich.com/ (accessed April 27, 2016).
[801] *No. 2 (2012) FCAFC 73.*
[802] Nigerian Law Reform Commission 1991.
[803] *Irish Press Plc. v Ingersoll Irish Publications Limited (1995) 2 IR 175*.

may award cost to a member, whether his action succeeded or not.[804] However, in the event of failure to follow the orders of court, the CAMA 1990 provides:[805]

> Any person who contravenes or fails to comply with an order made under section 312 of this Act that applies to him, shall be guilty of an offence and be liable to a fine of ₦500 or imprisonment for a term of one year or to both such fine and imprisonment.

It may be observed that the above section would hardly protect the interest of member(s) because the amount of fine imposed in the event of non-compliance with the order of the court, and the term of imprisonment are very low and inadequate that would hardly make the wrongdoers abstain from oppressive conduct.

4.12 Investigation of a Company by the CAC

This is another remedy available to members under the CAMA 1990. Details of the procedure for investigation of a company as a remedy for members is provided below:[806]

> The Commission may appoint one or more competent inspectors to investigate the affairs of a company and to report on them in such manner as it may direct.
>
> The appointment may be made-
>
> (a) in the case of a company having a share capital, on the application of members holding not less than one quarter of the class of shares issued;
> (b) in the case of a company not having a share capital, on the application of not less than one quarter in number of the persons on the company's register of members; and
> (c) in any other case, on application of the company.

[804] s. 301(3) CAMA 1990.
[805] s. 313 CAMA 1990.
[806] s. 314(1); 314(2)(a)-(c); 314(3) CAMA 1990.

> The application shall be supported by such evidence as the Commission may require for the purpose of showing that the applicant or applicants have good reason for requiring the investigation.

The above remedy is not specifically limited to notice of meeting or where a member was unable to exercise his voting right. Therefore, the above as a remedy was mentioned to have a clear picture of the entire remedies that can be exercised by members, both in a court of law and from the regulatory bodies like the CAC in the provision.

4.13 Shareholder Activism in Relation To Member's Participation in the AGM

This sub heading would examine the role of shareholder activism towards improving member's participation in the AGM in Nigeria. Shareholder activism is the intervention by shareholders in running the affairs of the company.[807] It involves all kinds of shareholder engagement and discussion with the company and questioning company's policies.[808] In another word, shareholder activism was a result of the acknowledgement for shareholders as the owners of the company.[809]

The concept of shareholder activism originates from the United States (US). However, its practice spread beyond the US as recent research suggests that shareholder activism has the potentials of being very successful across the globe.[810] The World Federation of Investors[811] (WFI) was officially incorporated on July 19, 1979, as a center for

[807] http//moneyterms.co.uk/shareholder-activism (accessed February 23, 2016).
[808] RF Balotti, JA Finkelstein and GP Wouldiams, Meeting of Stockholders, Aspen Publishers, (1996) para 5.4; Magaji, S., Protection of Minority Shareholders under Nigerian Company Law, Master Project Paper, Universiti Utara Malaysia, 2015.
[809] S. Worthington, *Shareholders: Property, Power and Entitlement*, part 1 &2, vol. 22 *Company Lawyer* (2001) 258; Kuek Chee Ying, Shareholder Activism through Exit and Voice Mechanism in Malaysia: A Comparison with the Australian Experience," Bond Law Review vol. 26 iss 2 (Dec. 2014).
[810] Robin, fn. 222 at 9.
[811] WFI Investors Rights. http://www.wfic.org/wfic_organizations.asp. (accessed April 15, 2016).

exchanging information and ideas between the various National Associations. Thus, Nigeria, through the Proactive Shareholders Association of Nigeria (PROSAN) was part of this body. The WFI emphasises on the need to educate and inform shareholders about their rights. This is because one can only seek to protect a right when you are aware of the existence of such rights. Member's awareness of their right is a key to enforcing such rights and remedies attached.

There may be several reasons for shareholder activism. However, it is principally linked with principal/agent model.[812] Thus, shareholders as the owners of the company (principal) and directors as (agents) of the shareholders. It is in this regard that shareholder activism is said to mitigate the likelihood of self-dealing by management, as well as protection of shareholders.[813] Etukudo said, "The association serves to protect the interest of investing shareholders who can contribute to the formulation of broad corporate policies, thereby enhancing management accountability."[814] Amao and Amaeshi examined the roles of shareholder association. They argued that shareholder association help in educating and enlighten shareholders of their rights in companies. The shareholder association assists in voicing out the opinion of members which made them not only seek the value of their investment but influence corporate strategies.[815] Thus, "Vigilant shareholders are said to play the role of fire alarms, and their mere presence can alleviate managerial or boardroom complacency. When

[812] Mc Jensen and WH Meckling, "Theory of the Firm: Managerial Behaviour, Agency Costs and Ownership Structure," vol. 3 *Journal of Financial Economics* (1976):305.
[813] LA Beebchuk, "The Case for Increasing Shareholder Power," vol. 118 *Harvard Law Review* (2005): 833.
[814] Etukudo. A, Issues in Privatization and Restructuring in Sub-Saharan Africa - Interdepartmental Action Programme on Privatization, Restructuring and Economic Democracy Working Paper IPPRED 5 (2000).
[815] Amao O. & Amaeshi, K., "Galvanising Shareholder Activism: A Prerequisite for Effective Corporate Governance and Accountability in Nigeria," *Journal of Business Ethics*, vol. 82, no. 1, (2008): 119-130; Shareholder Activism in Nigeria, 2008. http://www.eldis.org/ (accessed March 15, 2015).

companies perform poorly, shareholder activists are said to play the role of fire brigades that bring about change and more quickly than would have been the case had the fire brigade been on strike."[816]

Nigeria was variously rated by the World Bank investor protection index, as performing below average regarding transparency of transactions and minority shareholder protection.[817] The development of shareholder activism was resulted by the need to reform shareholder empowerment and better protection to shareholders, through corporate accountability and transparency.[818]

In Nigeria, various changes to the Code of Corporate Governance for Public Companies in Nigeria 2011 (CCGPCN 2011) witnessed the reform of shareholder activism through the formation of shareholder associations. The adoption of the CCGPCN 2011 by the SEC and CAC saw another pathetic set of shareholding culture as well as domination of shareholders in company's democratic process. This resulted in series of recommendations being made to enhancing more participation of members in company's resolution making.[819] This is so because, the previous CCGPCN centered more on members, as against what is obtainable in other parts of Africa that cover wider perspective; including various stakeholders.[820] The Securities and

[816] Amao & Ameshi, fn.815
[817] Doing Business, 2015 Data for Nigeria. http://www.worldbank.org/ http://www.doingbusiness.org/ (accessed February 25, 2015).
[818] Shareholder Activism in Nigeria, 2008. http://www.eldis.org/ (accessed March 15, 2016).
[819] G.O. Demaki, "Proliferation of Codes of Corporate Governance in Nigeria And Economic Development," *Business and Management Review,* vol. 1(6), August, (2011): 1-7 at 6.
[820] Rossouw, G. J., "Business Ethics and Corporate Governance in Africa," *Business and Society*, vol. 44 no.1, March (2005): 94-106 at 97.

Exchange Commission encourage shareholders to establish shareholder associations to protect their interest through an independent association.[821]

There are various independent associations of shareholders in Nigeria. This type of associations were not set up by the government, they are usually regarded as activist associations formed to protect their common interest, and this is recoginse by the Nigerian Constitution which allows freedom of association,[822] including shareholders association. The existence of shareholder associations demonstrates that investors in Nigerian are willing to protect their ownership rights in corporations as well as have power over company's decision making.[823] However, leaders of shareholder associations are engaged in corrupt practices that are even worse than that involved in the public sector. Instead of protecting the interest of their members, some chairmen of shareholders' associations prioritize their selfish interest. They equally failed in educating minority shareholders on how to protect their rights. [824]

4.14 The Role of Regulatory Bodies in the Enlightenment and Enforcement of Remedies

The corporate regulators have a significant impact in ensuring compliance by the management and in recent time, corporate regulators are bringing cases against

[821] Magaji, S., Protection of Minority Shareholders under Nigerian Company Law, Master Project Paper, Universiti Utara Malaysia, 2015.
[822] s. 40 Constitution of the Federal Republic of Nigeria 1999 as amended.
[823]Sola Ephraim-Oluwanuga 'Role of Shareholders in Implementing the Code of Corporate Governance' available at http://www.businessdayonline.com (accessed February 27, 2016).
[824] Rotimi Blaze: A Minority Shareholder. http://www.daargroup.com/daar-group/latest-news/vanguardngr-shareholders-associations-losing-focus. (accessed March 17, 2016).

management that breaches their duties.[825] The Director General of the CAC believed that the current provision of the CAMA 1990 which was a legislation of more than 20 years is preventing the CAC to fully exercised its regulatory and enforcement functions. He calls for substantial amendment of the CAMA 1990.[826] The DG further states, "Securing an amendment of CAMA has become more compelling considering that legislation that set up most of CAC's peer regulators have been amended."[827]

In Nigeria, the NSE as a self-regulatory organisation is working tirelessly to protect shareholders as well as maintain their confidence in the stock market. This aspect of investor protection is relevant to this study.[828] It is important to state that, the NSE has many functions. However, its function in capital market regulation is not related to this study. Despite various criticism labeled against the NSE, it has continuously pledged to adopt better avenues of protecting shareholders.[829] About a voting right, majority members, and interested party have continuously oppressed minority members through exercising voting right, which at the end left minority members at the mercy of the majority. The NSE to address this problem introduced voting restrictions on any

[825] Ramsay Ian, "Increased Corporate Governance Powers of Shareholders and Regulators and the Role of the Corporate Regulator in Enforcing Duties Owed by Corporate Directors and Managers," *European Business Law Review* 26.1 (2015): 49-73.

[826] "20 Years after Enactment, CAC RG Calls for Amendment Of CAMA." http://new.cac.gov.ng/home/20-years-after-enactment-cac-rg-calls-for-amendment-of-cama/ (accessed March 17, 2017).

[827] Favour Nnabugwu, "How amendment of CAMA would improve investment climate," *Vanguard* (August 8, 2016). http://www.vanguardngr.com/2016/08/amendment-cama-would-improve-investment-climate/ (accessed June 3, 2017).

[828] http://www.nse.com.ng/regulation (accessed April 13, 2016).

[829] NSE reassures Shareholders on Investor Protection http://webtvng.com/news/85.html (accessed April 13, 2016).

interested persons from voting any transaction he stands to benefit from.[830] Thus, where a party is interested, he would not be allowed to vote in such resolution. [831]

4.14.1 The Role of SEC in Protecting Shareholders

The Commission has various functions in the capital market. However, in this study, regard is given to the roles of the SEC as relates to the meeting of members. The SEC has role in protecting members through enlightenment.[832] Arumeh Oteh, who was a former Director General of the SEC said, "The Commission has been engaged in various education and enlightenment campaigns across several areas in Nigeria and hoped that such would have positive impact in protecting shareholders."[833] The SEC in order to ensure better protection of member's voting right maintained, "A person in an annual general meeting or extraordinary general meeting or court ordered meeting who stands to gain on a transaction to be voted at the meeting shall not be entitled to vote on the issue in which he stands to benefit."[834] The above rule demonstrates the effort of SEC in protecting the interest of members.

4.15 Member's Remedies from the Perspectives of the Respondents

4.15.1 Themes and Sub themes

[830] SEC and NSE introduce Voting Restrictions to Protect Minority Interests (November 24, 2014) http://www.internationallawoffice.com/newsletters/Detail.aspx?g=f5196822-75fa-4d4f-a1ae-cda0c2833a44 (accessed April 17, 2016).
[831] Rule 2.7.1 & 2.7.2 of the Nigerian Stock Exchange Rules Relating to Board Meetings and General Meetings of Issuers, effective 1 November 2014.
[832] s. 13(k)-(s) Investment and Securities Act 2007.
[833] Arunmah Oteh, Speech-The Pivotal Role of the Nigerian Capital Markets in the Transformation Agenda for the Nigerian Economy. (11/29/2012) http://www.sec.gov.ng/news/2012/11/29/speech-the-pivotal-role-of-the-nigerian-capital-markets-in-the-transformation-agenda-for-the-nigerian-economy---arunmah-oteh-dg-sec.html (accessed March 23, 2016).
[834] Draft Securities Exchange Commission Rules published in February 2014.

The theme(s) in this chapter emerges based on research question two while the sub themes were based on the responses gotten from the respondents. This shall be seen in the table below.

Table 4.1 *Themes and Sub themes for Research Question Two*

Research Question	**Theme**	**Sub themes**
What are the remedies available to members that are unable to participate in AGM due inability to receive notice of AGM under Nigerian company law?	Remedies available to members	Accidental omission as a defence The Penalty of ₦500.00 under CAMA 1990 Jail Term as a Remedy to Members Enforcement of Remedies Member's Awareness

	The Role of Regulatory Bodies in facilitating the Enforcement of Member's Remedies
	The Role of Shareholder Association towards enlightenment of members

Based on the above table, there is one theme which focuses on the remedies available to members while seven sub themes emerged from responses gotten from the respondents. The next heading contains the excerpts and analysis of the data.

4.15.2 Accidental Omission as a Defence from the Perspective of Respondents

From the excerpts, Respondent 4 begins by giving justification for accidental omission as a defence. He opined:[835]

> *Accidental omission was put in place to curtail some unreasonable suits that may be filed by members on flimsy excuses, that they did not get the notice of AGM. It is an exception that allows some unavoidable circumstances/unavoidable mistakes. It recognises that in certain*

[835] R4 (Lecturer), interviewed by researcher, Zaria, Kaduna, Nigeria, November 24, 2016.

situations, such mistakes should not be deliberate, but due to inadvertence. Such mistakes are bonafide and companies should not be made responsible to bear the consequence as provided in the general provision.

The above view is a justification for accidental omission as a defence, to ease a company from the burden of unjustified litigation, on the ground of non-service of the notice. Similarly, Respondent 5 stated, "These notices are sent by human beings. Someone might be a shareholder today and ceases to be a shareholder tomorrow. He might sell the shares or transfer it or he might even die. So, they cannot have automated data to send notices to all these shareholders."[836] Additionally, Respondent 11 opined, "We have companies that have more than a million shareholders. Human error aspect is equally there and all in favour of the company."[837] Thus, it is natural to expect some omission from the management to serve every member with the notice of meeting.

According to Respondent 5, "The ownership of shares might change from one person to another before the next general meeting. It is possible for the company to miss out some names because their shares have been transferred to other people. There is no management of a company that would deliberately refuse to send notices."[838] The above opinion by Respondent 5 equally justifies the need to have accidental omission as a defence. Respondent 6 mentioned, "Accidental could be the notice has been posted, and a member has not received it. It is not the fault of the secretary. That is why the secretary if there is a dispute, would bring the record to show that the post office has stamped and received the notice."[839] All the above responses justified the recognition of accidental omission as a defence.

[836] R5 (Lecturer), interviewed by researcher, Kano, Nigeria, October 25, 2016.
[837] R11 (Company Secretary), interviewed by researcher, FCT Abuja, Nigeria, November 13, 2016.
[838] R5 (Lecturer), interviewed by researcher, Kano, Nigeria, October 25, 2016.
[839] R6 (Shareholder activist), interviewed by researcher, Kano, Nigeria, November 21, 2016.

Accordingly, respondents were asked about whether accidental omission operates in favour of the management (AODFM). The responses can be seen in the table below:

Table 4.2 *Defence of Accidental Omission*

Respondent	**AODFM**
R2	Yes
R4	Yes
R5	No
R6	No
R7	Yes
R9	Yes
R10	Yes
R11	Yes
R12	No
R13	Yes
R14	Yes

Based on the above table, out of the eleven respondents asked, eight respondents (R2, R4, R7, R9, R10, R11, R13 & R14) were of the view that accidental omission favours the management of a company. This is because the management may decide not to serve certain members of the company with the notice of meeting and claim the defence of accidental omission. Although, the burden lies with the company to show that a member was accidentally omitted. On the other hand, three respondents (R5, R6 & R12) believed that accidental omission would not be manipulated to favour the management. It all depends on the circumstance of the case. From the excerpts, Respondent 7 stated, "This law is faulty. A shareholder cannot have a successful case with this accidental omission."[840] This view pointed out that member's action would

[840] R7 (Shareholder activist), interviewed by researcher, FCT Abuja, Nigeria, October 27, 2016.

hardly succeed, with the accidental omission as a defence to the company. Respondent 15 relied on the provision of CAMA 1990 when he mentioned, "If you are not given the opportunity to attend the meeting, section 221 CAMA 1990 states that failure to serve notice shall invalidate the meeting, except due to accidental omission. If you are entitled to be given notice, and you have not been given notice, that made the meeting invalid under the CAMA 1990."[841] Respondent 2 argued:[842]

> *This is a deliberate inclusion, and it gives room for the management to take the shareholders for a ride. What is the definition of this accidental omission? It is not clearly defined, and this gives room for abuse. As the secretary, I can refuse to send you a notice because I know you cannot support us and when you plead, I can claim accidental omission.*

On the question of whether accidental omission operates in favour of the management, Respondent 13 was of the view that, "This defence operates in favour of the management, but to me, there is no problem if the management would take into account its fiduciary duty, the duty of loyalty, skill and care. In any case, if a shareholder is aggrieved with this, he can always go to court."[843] Responding in a similar way, Respondent 14 mentioned, "It is natural that we cannot be able to do everything in a perfect way. The defence of accidental omission, I can say is good for the company. The only thing is that it should be exercised in good faith only when there is a need for it."[844] According to Respondent 12 believed:[845]

> *The secretary has the list of every shareholder, even if that shareholder owns only 10 shares. As long as your address is there, there is no way you would be omitted in getting the notice. Even if the management has something to hide that they do not want people to come, there is always the quorum. The quorum has to be formed before you conduct the AGM.*

[841] R15 (Regulator), interviewed by researcher, Bauchi, Nigeria, November 28, 2016.
[842] R2 (Lecturer), interviewed by researcher, FCT Abuja, Nigeria, October 27, 2016.
[843] R13 (Company Director), interviewed by researcher, Kano, Nigeria, December 9, 2016.
[844] R14 (Company Director), interviewed by researcher, Lagos, Nigeria, December 10, 2016.
[845] R12 (Company Director), interviewed by researcher, Kano, Nigeria, November 22, 2016.

So, if you deny people coming to the AGM, and you do not form the quorum, you cannot conduct the AGM.

Adding his opinion in this context, Respondent 9 states, "I think it is really a disadvantage to the shareholders and I think the law needs to be reconsidered. It was deliberately done because there are members who are problematic. As professionals, we should not use the term 'accidental omission' recklessly."[846] Although Respondent 9 also admits that accidental omission operates in favour of the management, he cautioned the management not to be reckless in omitting to serve members with the notice of meeting. In a different opinion, Respondent 5 claimed, "I have never come across such. I am not saying it is impossible, but I have never witnessed where members are not invited for AGM. Every member has one vote."[847] However, Respondent 4 mentioned, "If a situation arises like that and the management put the defence of accidental omission, of course, they have the onus to prove that it was accidental."[848] Respondent 3 was of the view that:[849]

Accidental omission is a valid excuse, because of the vacuum created by CAMA, for its failure to define that as you pointed out has provided a kind of defence to the management. It is always a question of fact that 'he who alleges/asserts must prove,' if the company alleges that there are circumstances that warrant the so called accidental omission, then it is for them to prove and it is for the court to decide.

[846] R9 (Company Secretary), interviewed by researcher, FCT Abuja, Nigeria, November 14, 2016.
[847] R5 (Lecturer), interviewed by researcher, Kano, Nigeria, October 25, 2016.
[848] R4 (Lecturer), interviewed by researcher, Zaria, Kaduna, Nigeria, November 24, 2016.
[849] R3 (Lecturer), interviewed by researcher, Kano, Nigeria, October 26, 2016.

However, Respondent 10 was of the view that, "This accidental omission under CAMA 1990 almost takes away member's remedies. It is as good as if members do not have any remedy at all."[850] In a similar view, Respondent 11 stated:[851]

> *I doubt if a shareholder would get the desired redress if he wants to come against a company on this ground. It would be different if the company did not publicise the meeting, it would be a different thing if the shareholder is deliberately targeted provided he has provided his valid address and he is being able to confirm that all other shareholders with such kind of particulars have been given notice.*

Furthermore, respondents were asked whether accidental omission should be defined under the CAMA 1990 instead of being at the discretion of the court. The table below represents the summary of responses:

Table 4.3 *Defining Accidental Omission*

Respondent	**AOD**
R1	Should be defined by the court
R2	Define under CAMA 1990
R3	Should be defined by the court
R10	Define under CAMA 1990
R11	Define under CAMA 1990
R13	Define under CAMA 1990
R14	Should be defined by the court

Based on the above table, out of the seven respondents that were asked, four Respondents (R2, R10, R11 & R13) claimed that it would be better to define accidental omission under the CAMA 1990 than to leave it at the discretion of the court. Conversely, three Respondents (R1, R3 & R14) claimed that the court should continue

[850] R10 (Company Secretary), interviewed by researcher, Kano, Nigeria, October 24, 2016.
[851] R11 (Company Secretary), interviewed by researcher, FCT Abuja, Nigeria, November 13, 2016.

to exercise discretion in defining what amounts to accidental omission. From the excerpts, Respondent 11 opined, "The law has not spelt out on what amount to accidental omission and on whom lies the burden of proof."[852] Similarly, Respondent 10 states:[853]

> *If we want to improve upon this and avoid manipulations and fraud in the company, then there is need for either of the two; either the accidental omission to be defined clearly under the CAMA 1990 or the entire exception should be lifted out and penalty should be enforced for that.*

Respondent 13 also added, "I think the law should define it so as to clear uncertainties and that would prevent abuse by the management."[854] However, Respondent 14 states, **"**To me, the court should be allowed to exercise their powers to determine what amounts to accidental omission rather than the legislature."[855] Respondent 1 explained, "This depends on the fact and circumstances that is obtainable. I think the court should be the judge in this case. The problem is that people are not bothered. People are passive, and I think it is for the court to determine. The court should still have a discretion."[856] The above view emphasised that the court should continue to decide on what amount to accidental omission. Responding in a similar manner, Respondent 2 maintained:[857]

> *If the law cannot define it, I think there is room for judicial activism. The courts can help in deserving cases to come up with indicators about what amounts to accidental omission so that you do not leave room for abuse. We have good laws in Nigeria. Our problem is the end-users.*

[852] R11 (Company Secretary), interviewed by researcher, FCT Abuja, Nigeria, November 13, 2016.
[853] R10 (Company Secretary), interviewed by researcher, Kano, Nigeria, October 24, 2016.
[854] R13 (Company Director), interviewed by researcher, Kano, Nigeria, December 9, 2016.
[855] R14 (Company Director), interviewed by researcher, Lagos, Nigeria, December 10, 2016.
[856] R1 (Lecturer), interviewed by researcher, Jos, Nigeria, November 6, 2016.
[857] R2 (Lecturer), interviewed by researcher, FCT Abuja, Nigeria, October 27, 2016.

Sharing a similar view, Respondent 3 states:[858]

> *One beautiful thing about the law is that these omissions or inadequacies of the legislations are what prompted the development of the law by the judges. It enables the judges to step in, develop the law and give an interpretation. If the court can define this, I think it would be better than the legislature defining it. It is always better to leave the court use its discretion to come up with a definition that suits a particular purpose.*

Adding his view, Respondent 5 equally believed, there is no need to define accidental omission under CAMA 1990 and no need for further judicial interpretation. He claimed, "Accidental omission is not vague. It is clearly stated. It means you have accidentally omitted the name of a person and you fail to send him the notice. I do not think it should be capitalised by the management of a company to mean another thing."[859] In his response, Respondent 8 explained:[860]

> *If you understand what AGM means, as a shareholder you are the owner of the company. If the management has already scheduled an AGM and spend money for arranging the meeting and as a member, you are saying the meeting should not hold. Obviously, the company would be incurring a lot of expenses, and in that case, you are not helping the company. Instead of invalidating the meeting, a member should lay his complain to the company stating that he has not been served with notice of AGM so that the company should act promptly. If the company fails to do anything, it would be on record that a particular member has complained, and in such cases, a member can seek appropriate redress.*

The above view was to the effect that a member that has not been served with the notice shall only consider the remedy of invalidating a meeting as the last remedy. This is because the company must have incurred expenses in convening the meeting which such member seeks to invalidates.

[858] R3 (Lecturer), interviewed by researcher, Kano, Nigeria, October 26, 2016.
[859] R5 (Lecturer), interviewed by researcher, Kano, Nigeria, October 25, 2016.
[860] R8 (Shareholder activist), interviewed by researcher, Lagos, Nigeria, December 12, 2016.

4.15.3 The Penalty of ₦500.00 Under CAMA 1990

In this regard, seventeen respondents were interviewed on whether the penalty of ₦500.00 under the CAMA 1990 is an adequate remedy to members (PAR) and whether there is a need to a review. The summary of responses from the respondents is seen in table 4.4.

Table 4.4 *Monetary Fine*

Respondent	PAR
R1	Inadequate and should be reviewed
R2	Inadequate and should be reviewed
R3	Inadequate and should be reviewed
R4	Inadequate and should be reviewed
R5	Inadequate and should be reviewed
R6	Inadequate and should be reviewed
R7	Inadequate and should be reviewed
R8	Inadequate and should be reviewed
R9	Inadequate and should be reviewed
R10	Inadequate and should be reviewed
R11	Inadequate and should be reviewed
R12	Inadequate and should be reviewed
R13	Inadequate and should be reviewed
R14	Inadequate and should be reviewed
R15	Inadequate and should be reviewed
R16	Inadequate and should be reviewed
R17	Inadequate and should be reviewed

Based on the above table, all the seventeen respondents representing 100% unanimously agreed that the penalty prescribed (₦500.00) under the CAMA 1990

against directors and officers of a company in default was grossly inadequate as a remedy and should be reviewed upward.

From the excerpts, Respondent 12 states, "The penalty of ₦500.00 is too small. I would recommend a higher penalty."[861] According to Respondent 13, "The amount is too small as of today, it should be reviewed upward to go in line with what is obtainable in other jurisdictions. As it is, it can never serve any deterrent."[862] Respondent 6 added, "If we want to be serious, the fine should be much enough to deter the company from committing the offence."[863] In the same context, Respondent 14 states:[864]

> *The penalty is not in line with present reality. As it is, it would certainly encourage abuse by corporate managers particularly those that are not prudent. The law should be reviewed to make a heavy penalty on any officer involved. The penalty should be 'personal,' to be borne by the officer concerned and not the company.*

In his response, Respondent 1 maintained that "The penalty provision in CAMA is obsolete, whether you talk of liability or something else."[865] Respondent 15 explained:[866]

> *The CAMA was passed into law in 1990, and unfortunately, since 1990, there has not been any significant amendment. In fact, it is one of our major problems in the CAC. We know, not even the penalty on notice, all the penalties in the CAMA are not in accordance with the current realities. You would find out in the CAMA; you still have a penalty of ₦5.00 and that ₦5.00 you cannot use it to buy even a "pure water." Once a law is promulgated, it remains the law until it is changed. Even if the penalty is ₦5.00, we cannot on our own without following due process change it. But now, there is a bill before the National Assembly seeking to replace the current CAMA, to amend all the provisions of the CAMA and we have taken into consideration must of these things. The penalty is too small.*

[861] R12 (Company Director), interviewed by researcher, Kano, Nigeria, November 22, 2016.
[862] R13 (Company Director), interviewed by researcher, Kano, Nigeria, December 9, 2016.
[863] R6 (Shareholder activist), interviewed by researcher, Kano, Nigeria, November 21, 2016.
[864] R14 (Company Director), interviewed by researcher, Lagos, Nigeria, December 10, 2016.
[865] R1 (Lecturer), interviewed by researcher, Jos, Nigeria, November 6, 2016.
[866] R15 (Regulator), interviewed by researcher, Bauchi, Nigeria, November 28, 2016.

Respondent 16 equally has this to say:[867]

> *The penalty is very poor, and that would encourage management to misbehave. The National Assembly is in the process of reviewing the provisions of the CAMA and part of the issues that would be addressed include the issue of penalty. Even the ordinary person on the street can afford ₦500.00, but by the time you have steeper penalties and fine, people would begin to sit down and behave very well. ₦500.00 is quite low. I am one of the supporters that the law be reviewed upward so that people would see it as a fine.*

Adding his view, Respondent 7 reiterated, "This is not a penalty. It is useless."[868] In the same vein, Respondent 17 opined:[869]

> *This penalty is insignificant. I may decide not to hold the AGM and at the end of the day, may be there are ten directors, we can pay ₦5, 000.00. This law does not have any impact because it would encourage the management of the company not to hold the meeting if they have something to hide to the shareholders. They have started the process of reviewing the law, but obviously, stakeholders need to take this very serious. At least, something significant has to be applied to a company that refuses to hold AGM as at when due.*

According to Respondent 4:[870]

> *We have agitated for quite a long time for a review. The CAMA is overdue for a review because there are some of its provisions that are no longer realistic with the present circumstances. I think I would take the position that such penalty be reviewed upward to ensure that directors where they know they have a liability to incur that would be deterrent, they would be careful of anything they do.*

Respondent 1 believed that the penalty "Should be personal, against the officer who did it wouldingly. There is the *mens rea* aspect of it. There are instances where the company would be liable."[871] Adding his view in this regard, Respondent 10 states:[872]

[867] R16 (Regulator), interviewed by researcher, Kano, Nigeria, November 21, 2016.
[868] R7 (Shareholder activist), interviewed by researcher, FCT Abuja, Nigeria, October 27, 2016.
[869] R17 (Regulator), interviewed by researcher, FCT Abuja, Nigeria, November 22, 2016.
[870] R4 (Lecturer), interviewed by researcher, Zaria, Kaduna, Nigeria, November 24, 2016.
[871] R1 (Lecturer), interviewed by researcher, Jos, Nigeria, November 6, 2016.
[872] R10 (Company Secretary), interviewed by researcher, Kano, Nigeria, October 24, 2016.

> *The penalty under CAMA 1990 would not serve a deterrent at all. That is why continuously, consistently corporate organisations especially public limited companies in Nigeria violates this provision of the law, because they know that the amount that would be fine on them is ₦500.00, is very minimal; is as good as nothing. There is need for improvement on this particular amount.*

In his response, Respondent 11 maintained:[873]

> *The penalty is not adequate. You have to bear in mind that these laws were made 20 years ago, whereby the exchange rate was quite high. It is a question of most of our laws needs review, but it is unfortunate that in Nigeria, the legislatures have so much in their hands. ₦500.00 at the movement is just a nominal amount that does not tend to give the law the potency it deserves. I suggest that it should be amended to equally reflect the prevailing economic situation.*

Respondent 2[874] emphasised that the management should take their responsibility as a trust, in addition to the inadequacy of the penalty under CAMA 1990. He states:

> *Management of companies is a trust. You are managing shareholder's investments. These shareholders are not always there. AGM is their only way to voice out their opinions. The management can defraud and serve their interest if they know the only penalty they would pay for siphoning millions of Naira is just ₦500. This is not deterrent in any way. This is one aspect I would want you to recommend for a review at the end of your research.*

When asked about the penalty of ₦500.00 under CAMA 1990, Respondent 3 elaborates on the issue when he explained:[875]

> *The penalty reflects the inertia in the law enactment process in this country. Since when the CAMA was enacted, the penalty was a reflection of lack of constant review. That in itself is a problem on the part of the lawmakers to want to capture everything. In most jurisdictions, issues to do with penalties are defined by the regulators, not the lawmakers, so that the inflationary trend would be captured by the regulators who are constantly administering the law. This is one key challenge in our jurisdictions today. If you open our law books, you would see a lot of*

[873] R11 (Company Secretary), interviewed by researcher, FCT Abuja, Nigeria, November 13, 2016.
[874] R2 (Lecturer), interviewed by researcher, FCT Abuja, Nigeria, October 27, 2016.
[875] R3 (Lecturer), interviewed by researcher, Kano, Nigeria, October 26, 2016.

penalties that are so meagre, that are not commensurate with the offence and that is because the legislature has chosen to speak, instead of allowing the regulators who are in the field, who are administering the law to fix the penalty. The only solution is to remove the area of penalty in the law and vest the CAC or any other regulator with the power to determine the penalty based on the prevailing circumstances and inflationary trend in the country.

Admitting the inadequacy of the penalty, Respondent 3 suggested:[876]

The penalty should be increased, but the authority for the increase should not be the lawmakers in Abuja, who are bench warmers that hardly do anything. Legislation in Nigeria can take 20 years without review. This goes to show the extent to which some of these lawmakers are warming the benches there. It should be reviewed upward, but the entire provisions dealing with penalties should not be left under the concrete legislation, it should be under a guideline or regulation passed by the regulators that is subject to constant and consistent review daily or even monthly, as the case may be.

Respondent 5 maintained that:[877]

The penalty is grossly inadequate if you look at the provisions of the CAMA and of course some other laws. When an issue of money came up, you would discover that the amount mentioned under CAMA 1990 as a penalty is grossly inadequate. There is the need to review the monetary aspect whether as a penalty or amount of money required to be paid by a company for default of filing. These things are not in touch with reality nowadays, and there is need to review it. This should be done by looking at the prevailing exchange rate. The actual amount as a remedy may not be categorical; there are so many things that you look and put together before you make such amendment. Something close to what Malaysia has a penalty may be good and that would serve a deterrent.

Respondent 6 states: [878]

At one AGM, the chairman asked the company secretary that if he didn't comply, what would be the punishment and the secretary told him that for every day they did not comply, they would pay ₦500.00 fine. The chairman said the meeting should go ahead because the fine was too small.

[876] R3 (Lecturer), interviewed by researcher, Kano, Nigeria, October 26, 2016.
[877] R5 (Lecturer), interviewed by researcher, Kano, Nigeria, October 25, 2016.
[878] R6 (Shareholder activist), interviewed by researcher, Kano, Nigeria, November 21, 2016.

According to Respondent 9, "The penalty may not truly serve as a deterrent. Paying ₦500.00 is meagre. To me ₦500.00 is not deterrent."[879] In the same context, Respondent 8 mentioned:[880]

> *As at the time the CAMA was passed, ₦500.00 was a big amount of money. There is the need for a review of this penalty. The law also gives shareholders the right to go to court and call AGM. I think the monetary fine is not the only option. It is how we shareholders exercise our rights and when the company did not call AGM, the shareholders should go to court and call AGM. Similarly, when companies are fined; the money would go to the government, and the government would instead be capitalizing on the fine which is to be paid from shareholder's money.*

In essence, all the respondents agreed that the penalty of ₦500.00 is inadequate and not in conformity with the current reality. The CAMA 1990 need make an upward review of the penalties.

4.15.4 Jail Term as a Remedy for Members

In this regard, seven respondents were asked on whether jail term should be a remedy to shareholders (JTR) under CAMA 1990 for violating their rights in relation to notice and participation in the AGM. Their responses reflect in the table below:

Table 4.5 *Jail Term*

Respondent	JTR
R1	It should reflect under the law
R6	It should reflect under the law
R7	It should reflect under the law
R9	It should reflect under the law
R13	It should reflect under the law
R14	It should reflect under the law
R17	It should reflect under the law

[879] R9 (Company Secretary), interviewed by researcher, FCT Abuja, Nigeria, November 14, 2016.
[880] R8 (Shareholder activist), interviewed by researcher, Lagos, Nigeria, December 12, 2016.

The above table indicates that, all the seven respondents (R1, R6, R7, R9, R13, R14 & R17) representing 100% that were interviewed unanimously suggest that, jail term should reflect as a remedy to shareholders that were not given the opportunity to participate at AGM through notice of to convey AGM. The excerpts from the interview is included in the subsequent paragraphs.

According to Respondent 13, "I think based on circumstances of a case, jail as a remedy would be the best deterrent punishment on officer involved." Respondent 14 equally share the same view, where he explained, "Depending on the nature or circumstance, jail term would certainly serve a deterrent, but we are talking about notice and voting. It is not a criminal act (per se), but then I think it would be a good remedy." Similarly, Respondent 17 states, "If you have something like jail term, it would encourage the companies to hold their AGM as at when due. The management would be more transparent so that they cannot be caught by the other side of the law."

In his response, Respondent 7 mentioned, "I think if any secretary refuses to hold AGM, he should pay the cost or go to jail. It is high time they are jailed." Adding his view on the above, Respondent 9 believed, "Jail term would surely serve as a deterrent. Most of corporate regulatory activities hardly prescribe jail term unless if it has to do with fraud." In his opinion, Respondent 1 reiterates, "We have capital punishment and when you are guilty you go to jail. The officers who contravene corporate culture, they can be tried and sent to prison if they are found guilty. There are penalties which the

company can pay without recovering from the loss in about 10 years." According to Respondent 6:[881]

> *It has happened in the past. If you see what happens in the banks, some directors have gone to jail. Corporate governance is such a serious issue that if you are asked to become a director you think twice. It has a lot of responsibilities which many people do not really bother to think about. In corporate governance, many things can put you in trouble. Even if you do not attend a board meeting, you are part and parcel of the decision taken in that meeting. You cannot say because you did not attend. I think directors have to be very careful. We have seen so many breaches of corporate governance in companies. The SEC has been fining companies found to be violating corporate governance rules.*

4.15.5 Enforcement of Remedies

In this regard, the researcher asked twelve respondents on whether it is easy to enforce member's remedies in Nigeria (EMR) taking into account the *locus standi* (legal standing to sue). The summary of responses from the respondents can be seen in the table below:

Table 4.6 *Enforcement of Remedies*

Respondent	EMR
R1	Difficult to enforce
R2	Difficult to enforce
R4	Difficult to enforce
R5	Difficult to enforce
R6	Difficult to enforce
R7	Difficult to enforce
R9	Difficult to enforce
R10	Difficult to enforce
R11	Difficult to enforce

[881] R6 (Shareholder activist), interviewed by researcher, Kano, Nigeria, November 21, 2016.

R13	Difficult to enforce
R14	Difficult to enforce
R17	Difficult to enforce

Based on the above table, all the twelve respondents representing 100% admits that enforcement of member's remedies in the Nigerian courts is not easy to go by. However, the respondents differ as to the actual reason why the remedies were not easily enforceable. Respondents 1 & 5 linked the problem to the recognition of majority principle and *locus standi* established in *Harbottle's* case. According to R7, R 9, R10, R13, R14 &R17 the reasons may not be unconnected to the delay in the administration of justice system in Nigeria as well as the cost of litigation. On the one hand, R7 & R13 were of the view that incorporating alternative dispute resolution may help in resolving member's remedies instead of going through the normal court processes.

From the excerpts, Respondent 1 was asked on the enforcement of member's remedies in Nigeria. He states, "You know the enforcement is one of the legal problems we have in corporate law in Nigeria. Cases don't go to court because of the ruling in *Foss v. Harbottle* which says any wrong against the company should be carried by the company."[882] However, Respondent 13 states, "To be frank, cases or rather administration of justice in the country takes very long time, and it is always not easy to go by."[883] Responding to the same question, Respondent 14 added, "Enforceability of remedies in Nigeria is very difficult. Generally, in Nigeria, our court processes are very cumbersome and difficult to go by…. As it is, I have not seen cases where

[882] R1 (Lecturer), interviewed by researcher, Jos, Nigeria, November 6, 2016.
[883] R13 (Company Director), interviewed by researcher, Kano, Nigeria, December 9, 2016.

shareholders went to court to seek this remedy."[884] According to Respondent 17, "When you look at the context, it provides that you go to court, at the same time, it is hard for you to get justice."[885]

According to Respondent 11, "The truth of the matter is that the enforceability aspect is not quite effective for obvious reasons which continue to be challenged, to all the companies. I think until when the law is amended and when all other considerations are looked into and provided for, enforceability would be quite low."[886] In a similar view, Respondent 2 reiterates, "My problem is the enforcement. A shareholder who does not even care about his voting rights, how would he care about any penalty and whether it is enforced or not?"[887] In a related view, Respondent 10 states:[888]

> *On the issue of remedy itself, the amount that you would get in return when compared to the amount you have spent. The general problem is the administration of the justice system, there is a need for serious amendment in the law so that one would spend less, and at the end of the day get more.*

Respondent 1 explained, "You have to look at the agency cost. What is the number of shares I have and how much am I going to spend? If the shares are not more than 10, 000 and you are going to spend ₦500.000.00 to remedy a wrong; you feel that the agency cost is not commensurate and is one of the reasons for shareholder passivism. In his opinion, Respondent 9 maintained:[889]

> *Going to court in Nigeria has always not been an easy task. It is better as a member to look at other avenues than going to court. Going to court may solve the problem at the end of the day, but the time you spend, the*

[884] R14 (Company Director), interviewed by researcher, Lagos, Nigeria, December 10, 2016.
[885] R17 (Regulator), interviewed by researcher, FCT Abuja, Nigeria, November 22, 2016.
[886] R11 (Company Secretary), interviewed by researcher, FCT Abuja, Nigeria, November 13, 2016.
[887] R2 (Lecturer), interviewed by researcher, FCT Abuja, Nigeria, October 27, 2016.
[888] R10 (Company Secretary), interviewed by researcher, Kano, Nigeria, October 24, 2016.
[889] R9 (Company Secretary), interviewed by researcher, FCT Abuja, Nigeria, November 14, 2016.

resources you spend is a lot. Something that would take you a few days if you have gone through arbitration, mediation or any form of alternative dispute resolution would take a long time going to court. I don't think we should be going to court to enforce corporate rights.

On the *locus standi* to seek redress in a court law in Nigeria. Respondent 10 claimed:[890]

Generally, under the CAMA 1990 it is only the company that can institute an action in its name. However, where members have been wronged, a member may institute an action in court to claim remedies. In practice it is difficult for members to institute action, because when they go to court, the court would say they do not have right as individual to claim remedies. At times, they would spend too much money to institute an action while the remedy they would get is very minimal.

Explaining on the classes of action under CAMA 1990 Respondent 1 states:[891]

The provision of the law is very clear. There are distinct provisions on personal action. A shareholder is allowed to take personal action. There is also what is known as a derivative action. It is brought by some people against the company. There are cases where you don't need to prove any wrong. In such cases, you can ask for relief against oppression, against discriminatory conduct or prejudicial conduct. You may even ask for an investigation of the company by the CAC. You can bring an action for winding up of the company; which supposed to be the last remedy. Those are some of the remedies recognised by law.

Also, explaining on various remedies available to members, Respondent 4 states: [892]

We have different types of remedies, we have minority protection, that is those who because of the constitution of the company, the tendency of oppressing them is very likely and when such happens the CAMA has made provisions in such situations. The remedies are there for the shareholders to enforce and the courts are also there for the shareholders to access. I can only say that these remedies some people may not really want to go to court for their enforcement because many shareholders of the company are diverse shareholders except those who have majority shareholding (and the management does not play with them). They would always do something for their interest.

[890] R10 (Company Secretary), interviewed by researcher, Kano, Nigeria, October 24, 2016.
[891] R1 (Lecturer), interviewed by researcher, Jos, Nigeria, November 6, 2016.
[892] R4 (Lecturer), interviewed by researcher, Zaria, Kaduna, Nigeria, November 24, 2016.

In his response, Respondent 5 maintained:[893]

> *You cannot allow an individual member to be speaking on behalf of the company. Section 300 of CAMA 1990 has made provision for that. It is only the company that can take a decision (which means majority of members), so if majority decides this is how the company would go, then minority members would have to abide by the decision of the majority. Exceptionally, where a personal right of member is infringed upon, he can go to court. This includes where he was not invited for a meeting, or where he was refused to exercise his vote and to be given a dividend. There is nothing that prevents a member from getting cost of litigation, but to pay him damages; he must prove damage to himself.*

Still, on the issue of *locus standi* to institute an action on behalf of a company, Respondent 10 opined:[894]

> *I would blame the law. The law tends to be archaic and too rigid in that respect. The courts tend to apply the common law aspect, ignoring the equity part of the law. The most important thing is that the court ought to have seen the cause of action, the merit or otherwise of the cause of action that warrants that particular party either a member of the company or a member of the general public that institute an action claiming some remedies against the company. The archaic nature of the law affects this issue.*

Respondent 6 mentioned, "I believe in the courts, and I also believed that once a case is taken to court, action is taken."[895] However, Respondent 7 opined, "Unless you change the laws, lawyers have one million ways of wasting your time. You might die without the case coming to an end."[896] Respondent 13 was of the view that, "The enforcement process has to be simplified or rather the use of ADR to settle these kinds of cases."[897]

[893] R5 (Lecturer), interviewed by researcher, Kano, Nigeria, October 25, 2016.
[894] R10 (Company Secretary), interviewed by researcher, Kano, Nigeria, October 24, 2016.
[895] R6 (Shareholder activist), interviewed by researcher, Kano, Nigeria, November 21, 2016.
[896] R7 (Shareholder activist), interviewed by researcher, FCT Abuja, Nigeria, October 27, 2016.
[897] R13 (Company Director), interviewed by researcher, Kano, Nigeria, December 9, 2016.

4.15.6 Member's Awareness

In response to the challenge affecting enforcement of member's remedies, some respondents in this study hinted that lack of member's awareness is a great challenge to the enforcement of rights and remedies (LMAER). In this regard, thirteen respondents were interviewed.

Table 4.7 *Member's Awareness*

Respondent	LMAER
R1	Members are not enlightened
R2	Members are not enlightened
R4	Members are not enlightened
R5	Members are not enlightened
R6	Members are not enlightened
R7	Members are not enlightened
R10	Members are not enlightened
R11	Members are not enlightened
R12	Members are not enlightened
R13	Members are not enlightened
R14	Members are not enlightened
R15	Members are not enlightened
R17	Members are not enlightened

The above table shows that all the thirteen respondents were of the view that members of a company in Nigeria are not enlightened about their right, remedies and how to enforce them. This was considered to be a challenge to enforcement of rights and remedies.

From the excerpts, Respondent 13 states, "Although I am not a lawyer, but it appears that shareholders should be enlighten first because it is only when shareholders know

their rights then you talk about enforcing it."[898]According to Respondent 1, "Of course, notice is a personal issue, but at the same time, until shareholders are sensitised and know how to exercise their rights, enforcement would be a challenge. Until there is awareness, it would always be a business the way it used to be."[899] In his response, Respondent 2 equally believed that "the shareholders are docile in Nigeria."[900] Lack of member's awareness was empasised by Respondent 14 when he said, "Many of the shareholders are not enlightened to go to court and enforce their rights. It is only when shareholders are enlightened then you talk of going to court."[901] Respondent 2 added, "When you go around you would find out that an insignificant number of shareholders know about the remedies and even those who know the remedies do not exercise them. It is more of paperwork than practice." All the above responses emphasised that lack of awareness affects the enforcement of remedies by members.

Responding on the same question, Respondent 12 mentioned, "I could recall, in the last 20 years, our AGM used to take 20 minutes because most of the people in attendance were not aware of what should be done. There was no challenge."[902] Respondent 1 added, "The only problem is that some of the shareholders are not educated."[903] Respondent 5 equally share the same view, he maintained, "It is only that the management uses the ignorance of the majority of the shareholders."[904] However, Respondent 12 believed that "Everything is changing now. Members are

[898] R13 (Company Director), interviewed by researcher, Kano, Nigeria, December 9, 2016.
[899] R1 (Lecturer), interviewed by researcher, Jos, Nigeria, November 6, 2016.
[900] R2 (Lecturer), interviewed by researcher, FCT Abuja, Nigeria, October 27, 2016.
[901] R14 (Company Director), interviewed by researcher, Lagos, Nigeria, December 10, 2016.
[902] R12 (Company Director), interviewed by researcher, Kano, Nigeria, November 22, 2016.
[903] R1 (Lecturer), interviewed by researcher, Jos, Nigeria, November 6, 2016.
[904] R5 (Lecturer), interviewed by researcher, Kano, Nigeria, October 25, 2016.

getting informed. Now, people ask questions. So, the management has to be fully prepared. We make sure every figure can be defended."[905]

Adding his view to the above, Respondent 15 also believed, "There has not been a lot from members and this mainly due to their lack of knowledge on their rights and how to exercise them."[906] According to Respondent 5, "The only problem is that majority of the shareholders when they receive the notice, they think they would just be called there to be given refreshment and eventually collect their dividends. More than 75% of them don't know the extent of their powers to control the companies. They don't know why they are there at the AGM."[907] Similarly, Respondent 10 explained:[908]

> *The management tends to take advantage of member's ignorance as to entire workings of a company. At times, due to financial reasons a company may not be able to send its board members for training. That is an impediment. Secondly, deliberately or out of ignorance on the part of members, they might not ask for training on certain particular proceedings of a company. I would like to make reference to particular Code of Corporate Governance that was issued by SEC sometime in 2011. It makes it obligatory on the part of a company (any Plc in Nigeria) to train its members on how company operates so that it would enable members to understand the way and manner the workings of a company are.*

On the one hand, Respondent 11 believed, "The shareholders need to be pro-active, vigilant because it is their rights, their privileges and they should be the ones to be at the forefront."[909] In this regard, Respondent 17 maintained, "I think the best way to overcome this is to fully enlighten the shareholders because if a shareholder does not

[905] R12 (Company Director), interviewed by researcher, Kano, Nigeria, November 22, 2016.
[906] R15 (Regulator), interviewed by researcher, Bauchi, Nigeria, November 28, 2016.
[907] R5 (Lecturer), interviewed by researcher, Kano, Nigeria, October 25, 2016.
[908] R10 (Company Secretary), interviewed by researcher, Kano, Nigeria, October 24, 2016.
[909] R11 (Company Secretary), interviewed by researcher, FCT Abuja, Nigeria, November 13, 2016.

know what is left or right, obviously, it is very difficult for him to contribute effectively during the meetings."[910] Respondent 4 added:[911]

> *Member's participation in the AGM can only be effective if members really know their rights. At times the management of companies (board of directors) they play over the lack of knowledge of the members. Members should also know that they have statutory powers that they can use at AGM. The CAMA 1990 has provided that members have power to remove directors, members appoint directors, but unfortunately, members turn around to fear directors. If members of a company are really educated or given a better orientation to know their rightful position at AGM that would contribute a lot.*

Respondent 11 opined, "If a member knows he has that kind of right and privileges that is when he would start thinking of how to enforce it."[912] According to Respondent 7, "Unfortunately, many shareholders don't attend the meeting due to many reasons. I attribute it to their ignorance of the AGM."[913] Respondent 6 explained:[914]

> *I had a situation in 1996 when a woman came to my house; she says she has come to thank me for the programme I had on TV which explains shareholding and she bought shares and now see the certificate they send me. She had laminated it, and when I look at it, it was a dividend warrant. She didn't know the difference between a certificate and a dividend warrant. All these would be a history, even publishing in newspapers would stop, because once shareholders are educated that's all.*

In this regard, Respondent 15 stated, "The CAC is trying to come up with better ways to enlighten members on their rights and various avenues to enforce them."[915] Similarly, Respondent 12 claimed, "I think the regulatory bodies are doing a good job in terms of bringing awareness among the shareholders. They are putting pressure on

[910] R17 (Regulator), interviewed by researcher, FCT Abuja, Nigeria, November 22, 2016.
[911] R4 (Lecturer), interviewed by researcher, Zaria, Kaduna, Nigeria, November 24, 2016.
[912] R11 (Company Secretary), interviewed by researcher, FCT Abuja, Nigeria, November 13, 2016.
[913] R7 (Shareholder activist), interviewed by researcher, FCT Abuja, Nigeria, October 27, 2016.
[914] R6 (Shareholder activist), interviewed by researcher, Kano, Nigeria, November 21, 2016.
[915] R15 (Regulator), interviewed by researcher, Bauchi, Nigeria, November 28, 2016.

private sector to make sure that shareholders are carried along. This is a very good development."[916] However, Respondent 11 stated:[917]

> *At the moment, the CAC they initiated one or two programmes, but that is not enough. More needs to be done by the CAC, Nigerian Stock Exchange, SEC to enlighten the general public, because most of us are shareholders in various companies no matter how small it is. Right now, most of these enlightenments are done for the major shareholders. You would find out that a lot of them are already enlightened because they are the ones you hardly find a situation where they are not invited. The targeted audience that needs to be enlightened are the ones that are not participating. More enlightenment from the SEC, CAC and Nigerian Stock Exchange is needed to tell the general public that these are their rights, and this is how they should go about enforcing such rights.*

Responding to the lack of member's awareness, Respondent 17 maintained, "Shareholders should be enlightened, they should also be made to understand the importance of attending the meetings because if you do not attend meetings, there is no way you can voice out your grievances."[918] Respondent 7 suggested:[919]

> We should get volunteers to enlighten shareholders on what needs to be done. The Public Relations Department of companies are the ones responsible for this, but at times the companies don't want many of the members to attend the AGMs because they feel the more the attendance, the more trouble they might have. This is the fact. Sometimes only 300 members attend out of more than 1000 members.

Respondent 17 believed that "Public enlightenment is important. Although, it is optional to partake in AGM, but in as far as you have invested your hard-earned money, I think it is worthwhile to partake in the affairs of the company because that is the only avenue you have to challenge or to recommend the management."[920] In a related view, Respondent 5 also believed:[921]

[916] R12 (Company Director), interviewed by researcher, Kano, Nigeria, November 22, 2016.
[917] R11 (Company Secretary), interviewed by researcher, FCT Abuja, Nigeria, November 13, 2016.
[918] R17 (Regulator), interviewed by researcher, FCT Abuja, Nigeria, November 22, 2016.
[919] R7 (Shareholder activist), interviewed by researcher, FCT Abuja, Nigeria, October 27, 2016.
[920] R17 (Regulator), interviewed by researcher, FCT Abuja, Nigeria, November 22, 2016.
[921] R5 (Lecturer), interviewed by researcher, Kano, Nigeria, October 25, 2016.

The management should educate and inform members in the language they would understand. They should make them know that the companies belong to them and they have powers. The only problem the management would face is, when the shareholders know their rights, they would rebel against them because most of the management are not honest. A person may purchase 1000 or 100, 000 or even 1, 000 000 shares without any knowledge of how it works. He would just be waiting for anything to be declared and be given to him as dividends. Sometimes they just send their representatives. They do not know the importance of going there to air their views without knowing that majority views would always go. They have the money, but they don't have the enlightenment. Some have the enlightenment but do not have the money.

The above views explained the need for awareness and enlightenment of members regarding their right of participation in the AGM through notice and other relevant rights. This would assist them in the enforcement of the remedies.

4.15.7 The Role of Regulatory Bodies in Facilitating the Enforcement of Member's Remedies

In this regard, the researcher interviewed ten respondents on the role of regulatory bodies in Nigeria towards facilitating the enforcement of member's remedies (REMR). The summary of responses from the ten respondents can be seen in the table below:

Table 4.8 *Regulatory Bodies in the Enforcement of Remedies*

Respondent	REMR
R1	No comment
R2	Weak
R4	No comment
R6	Weak
R7	Weak
R8	Weak
R10	Weak
R15	Weak
R16	Neutral
R17	Neutral

Based on the above table, six respondents (R2, R6, R7, R8, R10 & R15) out of ten, which represents 60% were of the view that the regulatory bodies in Nigeria are weak, while two respondents (R1 & R4) did not respond to the question. On the one hand, two other respondents (R16 &R17) held a neutral view on the regulatory framework. From the excerpts, on the role of regulatory bodies in relation to member's participation at meeting as well the remedies, Respondent 4 stated:[922]

> *If you look at the functions of CAC in section 1 CAMA 1990 you discover that section 7 (1) (e) specifically says that the CAC can do any other thing (that is not even expressly provided in the CAMA) that would give it full effect to the operation or compliance with the Act. Every other thing that would contribute to the enforcement or application of the CAMA, the CAC has that power. That is the omnibus provision, and the omnibus power that the CAC has, to do other things to promote corporate management or any other thing dealing with companies in Nigeria.*

Respondent 1 was of the view that:[923]

> *The Securities and Exchange Commission has a role to play. They should observe, receive complaints and make their reports. That is why such agencies were set up. The government should also come in, to ensure fairness. The Corporate Affairs Commission should also help members to be overseeing the affairs of companies.*

According to Respondent 17, "Regulation is obviously a very complex issue. That is why the Code of Corporate Governance was introduced so that there would be a guiding document, to a certain extent."[924] In this regard, Respondent 15 states, "There has not been a lot from the members. This was mainly due to the lack of knowledge on their rights and how to exercise them. The CAC is trying to come up with better

[922] R4 (Lecturer), interviewed by researcher, Zaria, Kaduna, Nigeria, November 24, 2016.
[923] R1 (Lecturer), interviewed by researcher, Jos, Nigeria, November 6, 2016.
[924] R17 (Regulator), interviewed by researcher, FCT Abuja, Nigeria, November 22, 2016.

ways to enlighten members on their rights and various avenues to enforce them."[925] Additionally, Respondent 2 maintained:[926]

> *We have weak regulator infrastructure in Nigeria, and there are other huge problems of manpower. The surveillance, monitoring, and the enforcement is zero because the shareholders are docile. If they are up and doing, they would task the regulatory agencies. The management is in charge of the finances of the company and in a way, they are closer to the regulators.*

In the same vein, Respondent 7 mentioned, "We have sound laws in Nigeria, but the implementation is always the problem. All loopholes should be blocked. Let there be sincerity in the system."[927]

Respondent 8 added:[928]

> *The regulatory bodies are not doing enough. They are only concerned about how to raise money. They are expected to regulate, but now they are acting as government revenue collectors. As it is, if the regulators fined a company it is to be paid from shareholder's money, not the officer involved. There should be a solution to that; the officer concerned should be personally liable for his act or omission.*

However, Respondent 10 highlighted, "The regulators are not doing up to expectation. The only thing I know is that, recently, the SEC has revised its rules and guidelines and it has makes it obligatory for companies to ensure that anything that pertains to shareholder meets the shareholder within a particular time."[929] In a related view, Respondent 16 added:[930]

> *The SEC has introduced a 10-year master plan 2015-2025 and part of the initiative they introduced apart from the issue of corporate governance is that they introduced a "scorecard," the scorecard is*

[925] R15 (Regulator), interviewed by researcher, Bauchi, Nigeria, November 28, 2016.
[926] R2 (Lecturer), interviewed by researcher, FCT Abuja, Nigeria, October 27, 2016.
[927] R7 (Shareholder activist), interviewed by researcher, FCT Abuja, Nigeria, October 27, 2016.
[928] R8 (Shareholder activist), interviewed by researcher, Lagos, Nigeria, December 12, 2016.
[929] R10 (Company Secretary), interviewed by researcher, Kano, Nigeria, October 24, 2016.
[930] R16 (Regulator), interviewed by researcher, Kano, Nigeria, November 21, 2016.

> *trying to see how a particular company is exercising the provisions in the Code that is the major issue about the scorecard. The regulators are trying to see how these companies are complying with the code. The regulators are doing their best in this area.*

The above view was affirmed by Respondent 17 when he states: [931]

> *The Securities and Exchange Commission has come up with what is called 'Corporate Governance Score-Card.' It enables a company to assess itself based on those corporate governance requirements. If a company is able to honestly and truthfully review the requirements, it can place itself whether it has partially or fully complied with the requirements. The SEC encourages companies by placing their names on their website as the companies that complied with the corporate governance.*

Responding to the above issue, Respondent 6 states: "We have seen many regulators in the past not leaving up to expectation, but I am happy SEC is now doing a lot. In the next 3 or 4 years, we would see so many changes that would benefit shareholders."[932] Respondent 6 added:[933]

> *Every day we are learning, and things are changing. Not only that, SEC has been holding conferences all over the country, in secondary schools educating children from their young age to invest in the capital market and once that happens it would help because the child would tell his father what it is all about.*

According to Respondent 13, "The regulators must educate shareholders about their rights and how they should go about it, without this, all what we are saying would not happen." This emphasized the need for regulatory bodies in Nigeria to educate members about their rights and the procedure to enforce such rights.

[931] R17 (Regulator), interviewed by researcher, FCT Abuja, Nigeria, November 22, 2016.
[932] R6 (Shareholder activist), interviewed by researcher, Kano, Nigeria, November 21, 2016.
[933] R6 (Shareholder activist), interviewed by researcher, Kano, Nigeria, November 21, 2016.

4.15.8 The Role of Shareholder Association Towards the Enlightenment of Members

In response to the lack of enforceability of member's remedies at AGM, the researcher asked thirteen respondents on the role of shareholder association toward enlightenment of members and enforcement of remedies (RSAEM).

Table 4.9 *Shareholder Associations*

Respondent	RSAEM
R1	Shareholder associations protect the right of members
R2	Shareholder associations are not protecting the right of members
R3	Shareholder associations are not protecting the right of members
R4	Shareholder associations are not protecting the right of members
R5	Shareholder associations are not protecting the right of members
R6	Shareholder associations protect the right of members
R7	Shareholder associations are not protecting the right of members
R8	Shareholder associations protect the right of members
R10	Shareholder associations are not protecting the right of members
R11	Shareholder associations are not protecting the right of members
R12	Shareholder associations are not protecting the right of members
R16	Shareholder associations are not protecting the right of members

R17	Shareholder associations are not protecting the right of members

Based on the above table, ten respondents (R2, R3, R4, R5, R7, R10, R11, R12, R16 & R17) representing 76.9% were of the view that shareholder associations in Nigeria are not doing enough to protect the interest of their members. On the other hand, only three respondents (R1, R6 & R8) representing 23.07% opined that the shareholder associations are protecting the interest of members regarding creating awareness and the enforcement of rights and remedies.

From the excerpts, respondent 6 believed, "The right of a shareholder first and foremost is to protect his investment. Those who are enlightened have been doing it." In this regard, Respondent 8 believed, "No one would exercise the right for the shareholders. It is their rights and they should exercise it."[934] That means members must stand up to protect their rights. Respondent 2 maintained, "There should be activism. Members should make sure their rights are protected by the associations they belong. If they are not living to expectation, they can remove them from office or call them to account. Nobody can protect your interest if you don't protect it yourself. I think the shareholders need to be up and doing."[935] Members must protect and enforce their rights and remedies. Based on the above views, shareholder activism is one of the ways through which members can protect and enforce their rights and remedies. In the same context, Respondent 10 believed that "There would be a tremendous improvement when members formed an association, at least the company would know that the shareholders have now formed an alliance, or an association and they want to

[934] R8 (Shareholder activist), interviewed by researcher, Lagos, Nigeria, December 12, 2016.
[935] R2 (Lecturer), interviewed by researcher, FCT Abuja, Nigeria, October 27, 2016.

protect their interest."[936] The above was on the significance of shareholder association. Similarly, Respondent 3 opined:[937]

> *If members can form shareholder organisation or organise themselves under an umbrella, they can have a strong voice, and they can also carry forward their voices even against the wishes of the management. This is largely because it's their own money that the management is managing. If they have control over their own money, a lot of things would go their own way.*

All the above views signify the importance of shareholder association in Nigeria. In his response, Respondent 1 opined:[938]

> *There is what known as shareholder passivism. How do you turn it into shareholder activism? That is why we have the Shareholders Association of Nigeria which is divided into zones. Each zone would have their meeting and before the AGM comes up, they must have concluded their meetings. That is one of the ways to make shareholders more active. Another way of making this works is to begin to move towards the involvement of institutional investors. There is need to create awareness among the shareholders. There is need to work with informal method shareholders forming themselves into a pressure group and submitting proposals.*

The above opinion equally explained the role of shareholder association and institutional investors towards the enlightenment of members. Respondent 8 maintained:[939]

> *There are two things. First, is having the right and knowing how to exercise the right. Secondly, willingness to exercise the right. Having the right is not the problem, but are shareholders willing to exercise the right? That is the essence of what we are doing as shareholder association. It is to tell shareholders to exercise their rights, and we have gone to court to challenge some critical members of the board.*

[936] R10 (Company Secretary), interviewed by researcher, Kano, Nigeria, October 24, 2016.
[937] R3 (Lecturer), interviewed by researcher, Kano, Nigeria, October 26, 2016.
[938] R1 (Lecturer), interviewed by researcher, Jos, Nigeria, November 6, 2016.
[939] R8 (Shareholder activist), interviewed by researcher, Lagos, Nigeria, December 12, 2016.

> *Member's continuous engagement, consistent awareness creation is the only way that we can do all these things. It cannot be done overnight; it is a gradual process. We must educate shareholders; we must require shareholder's cooperation, the board of directors and the regulators, all of us are working together to maximize shareholder value. Continuous creation of awareness is the best way.*

However, Respondent 5 was of the view that, "The shareholder associations have been in existence and they have always been conniving with the management to perpetuate whatever the management wants."[940] Respondent 7 added, "Shareholder associations are not doing their jobs. I don't think they are representing the shareholders."[941] The above opinion explained on the inability of the shareholder associations to protect the interest of their members. In a related view, Respondent 12, explained, "The main problem is, there is no control in the shareholder association. Before the AGM, we receive calls to the extent we don't want the AGM to come up because everybody is a registered shareholder association. They need accommodation and others."[942] The above opinion described how the management of a company feels about shareholder association.

However, Respondent 17 believed, "There should be enlightenment which is essential. Then, shareholder association should have a role to play because it is a collective decision, it is easier to get justice than going to court as an individual."[943] This explains the need to have shareholder association to represent the interest of other members in the enforcement of member's right. However, the same Respondent 17 states, "At times the AGMs are teleguided because most of the shareholders are participating

[940] R5 (Lecturer), interviewed by researcher, Kano, Nigeria, October 25, 2016.
[941] R7 (Shareholder activist), interviewed by researcher, FCT Abuja, Nigeria, October 27, 2016.
[942] R12 (Company Director), interviewed by researcher, Kano, Nigeria, November 22, 2016.
[943] R17 (Regulator), interviewed by researcher, FCT Abuja, Nigeria, November 22, 2016.

through shareholder association and most of these associations are funded by the companies."[944] Respondent 11 explained:[945]

> *Before now, we were optimistic that the shareholder associations would be of great impact regarding the enlightenment. However, what we discover is that most shareholder associations over time have constituted themselves as a rallying force that are in a way more of personal interest. You discover that those people managing the activities of the shareholder associations are not properly composed, and only one or two are actively involved. The issue of representation is lacking, which means shareholder associations as we have it today is not actually a reflection of the yearnings and aspirations of the generality of the shareholders. Rather, it is a selected few that are well enlightened, that are fighting for their own personal interest. Those people are ones championing the activities of the shareholder associations. The shareholder associations ordinarily, should be champion by them, but as it is, they lacked the capacity.*

According to Respondent 16, "Nigeria is a wonderful country and that is why people are rushing to get this kind of engagements (shareholders association) for their personal interest."[946] This would hardly enable the executives to protect the interest of other members. On the one hand, Respondent 10 mentioned, "From my experience, I have not come across any shareholder association that came for the interest of their members."[947] This opinion hinted the laxity in the shareholder association. In his response, Respondent 2 added, "There is no activism in shareholders' associations. They are more of the management of the companies. In fact, we can call them insiders."[948] The shareholder executives that are supposed to protect the interest of their members now appear in support of the management. Respondent 4 states, "Personally, I have not got practical incidence or cases the shareholder association has risen up for any protection of the interest of shareholders. I don't have that

[944] R17 (Regulator), interviewed by researcher, FCT Abuja, Nigeria, November 22, 2016.
[945] R11 (Company Secretary), interviewed by researcher, FCT Abuja, Nigeria, November 13, 2016.
[946] R16 (Regulator), interviewed by researcher, Kano, Nigeria, November 21, 2016.
[947] R10 (Company Secretary), interviewed by researcher, Kano, Nigeria, October 24, 2016.
[948] R2 (Lecturer), interviewed by researcher, FCT Abuja, Nigeria, October 27, 2016.

experience."[949] The above opinion further undermines the role played by shareholder association in protecting and enforcing the interest of members.

On the one hand, Respondent 3 emphasised, "I think the most effective way to take charge of the company is through shareholder activism. This is a way of asserting the rights of the shareholders which the law has provided."[950] Respondent 3 further states:[951]

> *The shareholder associations that are most championed by few people, in most cases you would find that they would be invited to what is called "pre-AGM" briefing. At the "pre-AGM" briefing in most cases, you'll find out that money changes hands, bribery and corruption. This itself reflects the society that we live in. It is a reflection of the political culture. Money change hands and your principles, your positions are for sale. That's what it means. If you attend the meetings, you'll find that the management has its ways for several reasons. One of this like I said is the reflection of the development and the political culture that is so terribly corrupt and is entering the corporate world in a very fast phase. That is why we continue to experience a lot of bank failures, a lot of corporate collapse and so many malpractices in companies because the gatekeeper at the end is not effective enough.*

The above issues were some of the challenges affecting shareholder association in protecting the rights of its members. On the one hand, Respondent 16 claimed:[952]

> *To some extent, shareholder associations are doing their best to protect the interest of shareholders, like what happened in the banking sector where some of the banks were nationalized. The Central Bank of Nigeria and some of the shareholders were already in the court to represent other shareholders so that this policy can be reversed.*

[949] R4 (Lecturer), interviewed by researcher, Zaria, Kaduna, Nigeria, November 24, 2016.
[950] R3 (Lecturer), interviewed by researcher, Kano, Nigeria, October 26, 2016.
[951] R3 (Lecturer), interviewed by researcher, Kano, Nigeria, October 26, 2016.
[952] R16 (Regulator), interviewed by researcher, Kano, Nigeria, November 21, 2016.

However, the above opinion explained that shareholder association in Nigeria are not entirely ineffective, as they are trying their best in protecting the rights of their members. In this regard, Respondent 6 explained:[953]

> *As executives of shareholder association, many years back, I went to St. Lee secondary school, in Kano, when I was the chairman of Parents, Teachers Association, I asked each parent to add ₦1,000.00 on the school fees, that ₦1,000.00 was used to open an account and bought shares for the student, to know what 'shares' means. If you do this, the students would leave secondary school being shareholders and that was the objective. If one continues this way, it is the best way to educate the public.*

4.16 Conclusion

The concept of remedies recognised that violation of rights should not go without any kind of remedy to the party whose rights were breached upon. This is true of both civil recourse and corrective justice theories. In relation to members, the CAMA 1990 in Nigeria made distinct provisions that empower members of a company to seek redress in the event of a breach of their right. These remedies are principally contained under the CAMA 1990. The code of governance in Nigeria has done little or none in providing remedy to members. Based on the comparison between the relevant provisions of the CAMA 1990 and CA 2016, it is concluded that all the monetary penalty under the CAMA 1990 are grossly inadequate. This conclusion was supported by responses from the perspective of respondents which equally indicates the inadequacy of the remedies under the CAMA 1990.

Although the general principle of law established in *Harbottle's* case has continued to hinder successful enforcement of member's remedies in Nigeria, there are various challenges as well that hinders the effective enforcement of the remedies. This includes

[953] R6 (Shareholder activist), interviewed by researcher, Kano, Nigeria, November 21, 2016.

lack of access to justice or to the court. Going to court in Nigeria is not an easy task. It is costly, and cases take very long time, from the date of filing to the completion of the case. This make members reluctant to enforce their remedies in the court. Similarly, members themselves are not enlightened on the remedies. Another challenge that hinders the enforcement of remedies in Nigerian is that some of the shareholder association(s) that were formed to protect the interest of their members are being compromised by the management. Additionally, the regulatory bodies are not doing to the expectation in educating members of the company as to their rights and how to enforce them. These challenges and more, have made members of a company in a precarious situation. Hence the need to come up with a reform that ensures member's rights in relation to notice of AGM well protected. The next chapter would focus on the application of ICT in AGM under CAMA 1990.

CHAPTER FIVE

APPLICATION OF INFORMATION AND COMMUNICATION TECHNOLOGY IN ANNUAL GENERAL MEETING

5.1 Introduction

This chapter seeks to examine the application of information and communication technology (ICT) in AGM particularly as relates to service of notice. Similarly, consideration would be given on electronic meeting (e-meeting) as it involves participation of members under the Nigerian company law. The chapter attempts to answer research question three: How can application of ICT improve member's participation in the AGM under Nigerian company law? And achieve research objective three, which is to examine the application of ICT in enhancing member's participation in the AGM under Nigerian company law. The chapter adopts doctrinal methodology (library based) and fieldwork, in the form of a qualitative interview. Additionally, references were made to the relevant provisions of the Companies Act 2016 of Malaysia (CA 2016) because it is quite recent and has incorporated the application of ICT in AGM.

5.2 Information and Communication Technology and the Law

The Companies and Allied Matters Act 1990 (CAMA 1990) has no provision recognising the use of ICT in serving notice of AGM. To this end, Respondent 9 States,

"When you look at the law, there is no place where the use of ICT is mentioned."[954] One of the reforms introduced by the CAC was the introduction of online registration of companies and businesses.[955] Accordingly, one of the areas in the company law that remain unsettled across the world is shareholder meetings.[956] Member's participation is the key element to a successful AGM.[957] The importance of ICT today cannot be counted. Thus, application of ICT has significantly transformed the ways businesses are being conducted by the government and the public as well as between company entities and individuals. ICT enhances communication and facilitates the participation of members at the meeting.[958] Therefore, member's meeting is relatively one of the areas where the application of ICT would have a significant impact on the company law.[959] The application of ICT by companies facilitates sending of notices of meeting to members, updating information about the company among others. The advancement in technology allows members to attend general meetings electronically. The application of ICT equally enables dissident members with an easy way to solicit dispersed members, to estimate their support and publicise it on the websites. The significance of ICT improves the value of companies in several ways.[960] In order to

[954] R9 (Company Secretary), interviewed by researcher, FCT Abuja, Nigeria, November 14, 2016.
[955] Favour Nnabugwu, "How amendment of CAMA would improve Investment Climate," *Vanguard* (August 8, 2016). http://www.vanguardngr.com/2016/08/amendment-cama-would-improve-investment-climate/ (accessed June 3, 2017).
[956] Zetzsche, Dirk A., "Corporate Governance in Cyberspace-A Blueprint for Virtual Shareholder Meetings," (2005).
[957] Easterbrook, Frank H., and Daniel R. Fischel, "Voting in Corporate Law," *The Journal of Law and Economics* 26.2 (1983): 395-427; Pound John, "Proxy voting and the SEC: Investor Protection versus Market Efficiency," *Journal of Financial Economics* 29.2 (1991): 241-285.
[958] Bolodeoku Ige Omotayo, "Corporate Governance in the New Information and Communication Age: An Interrogation of the Rational Apathy Theory," *Journal of Corporate Law Studies* 7.1 (2007): 109-141.
[959] Elizabeth Boros, "Virtual Shareholder Meetings: Who Decides How Companies Make Decisions?" (2004): 28 *Melbourne University Law Review* 265 at 266; Pemmelaar, Wanne M, "Towards a Virtual General Meeting: I Accept or I Decline," *Utrecht L. Rev.* 4 (2008): 163.
[960] Elizabeth Boros, "The Online Corporation: Electronic Corporate Communications," published by the Centre for Corporate & Securities Regulation at the University of Melbourne, in collaboration with the Australian Securities and Investments Commission (ASIC) (1999).

access internet, one only requires a web browser and a modem and virtually all kind of services is facilitated through the internet at a relatively low price.[961]

In Malaysia for example, reforms were made under the CA 2016 which reflects the application of ICT in corporate law administration. In another word, the reforms made in Malaysia regarding the application of ICT would provide a roadmap for the reform of Nigerian company law. This chapter would provide the necessary guidance on what the Nigerian legislature should focus on as well as lay down a foundation for working implementation of reforms to Nigerian company law based on the peculiar challenges and realities in Nigeria.

5.3 Electronic Communication

Electronic communication is a necessary component of everyday business today.[962] Communication is vital among dispersed members and sensitising them on corporate governance issues.[963] There are various communication means available to members including email,[964] web conferencing which is used to conduct live meetings through the Internet. In a web conference, each participant/member can be with his computer at even from the comfort of his home and connect with other members through the Internet.[965]

[961] Mohammad Rizal Salim, "Internet Commerce and Critical Issues Relating to Company and Securities Laws," *The Malayan Law Journal* 1 (2001).
[962] Marthinus J. Maritz, "Electronic Communication in the Construction Industry," *Journal of Engineering, Design and Technology,* vol. 13 Iss 1 (2015):74 – 93.
[963] D. M. Kahan, "Reciprocity, Collective Action, and Community Policy," 90 *California Law Review* (2002): 1513.
[964] David Young, "Web Meetings: Bell & Howell Tries E-mail, Chicago Tribune," **(**June 10, 1996) at C3; Tami Kamarauskas, *Case Study: Inforte Corp. Hosts Virtual Shareholder Meeting,* Wallstreetlawyer.com (Oct. 2001) at 20.
[965] Sambhar Ankur, "Virtual Meeting Attendee," U.S. Patent Application No. 12/611,655.

One of the advances in ICT that made a profound impact on our working environment is the electronic mail (email). Email is one of the most popular means that facilitates business communication.[966] The email system shares some similarities with the concept of addresses used by the postal services that include return receipts and priorities when delivering messages.[967] The envelopes used in sending messages provides a kind of privacy by making its contents confidential. It further indicates to the recipient that the contents of the message have not been altered. Other "security features" include the signature on a letter identifies the sender and allow the recipient to be sure that the letter was in fact sent by the person he expects.[968] One study indicates that 84% of communications through electronic medium uses email.[969] In this regard, the Rules of the Nigerian Stock Exchange 2015 (RRNSE 2015) states that upon request of a member and where practicable, a company shall send to the email addresses of its members the soft copies of documents in addition to any other hard copy that would be sent by post.[970] The above rule recognised the use of ICT in sending relevant documents to shareholders through email addresses supplied by the shareholders to the company. It is one of the new rules that recognise the use of ICT in a company meeting in Nigeria. Electronic publishing means the use of electronics in a way that is cost-effective and cost-beneficial that facilitates the processes of publishing.[971] One central communication avenue that was contemplated by companies is the use of the website to communicate with the management and its

[966] Gluck, Fredric B., "Protection of Electronic Mail and Electronic Messages: Challenges and Solutions," *Information Management & Computer Security* 2.1 (1994): 28-40.
[967] *Ibid.*
[968] *Ibid.*
[969] Arvey, Richard D., "Why Face-to-Face Business Meetings matter," *White Paper for the Hilton Group* (2009), 4.
[970] Rule 19.8(b) RRNSE 2015.
[971] Woulds Gordon, "Embracing Electronic Publishing," *Internet Research* (2013).

members.[972] Further discussion on this would come from the perspective of the respondents.

5.4 Service of Notice

Section 220(1) CAMA 1990 provides that a company may give notice to any member "either personally or by sending it by post to him or to his registered address, or (if he has no registered address within Nigeria) to the address, if any, supplied by him to the company for the giving of notice to him." The section further defines a registered address as, any address provided by a member to the company for sending notice to him."[973] However, since the CAMA 1990 does not recognise service of notice by electronic means, it would be unrealistic to attribute to the legislature that they intend the use of ICT in that regard.[974] Consequently, there is nowhere under section 220 of the CAMA 1990 where electronic service of notice is recognised. The RRNSE 2015 requires that companies shall published notices of meeting, circulars and other information on their websites."[975] This is one of the rules that recognised the use of ICT in publishing notice of AGM on the company's website.

Commenting on the scope of the term "electronic transmission," James Holzman and Thomas Mullen maintained that "electronic transmission" is a communication which does not directly involves the physical transmission of paper.[976] This includes "facsimile transmissions, emails, postings on a website, data tapes, discs, and older technology mainstays like cablegrams and telegrams, all of which meet the statutory

[972] Zetzsche, fn.956.
[973] s. 220(5) CAMA 1990.
[974] Bolodeoku, fn.958 at 113.
[975] Rule 19.8(a) RRNSE 2015.
[976] Holzman, J.L and Mullen, T.A, "A New Technology Frontier for Delaware Corporations," *Delaware Law Review* 4 (2001): 55 at 57.

definition."[977] For many companies, it would be more economical to communicate with members electronically. The simple cost-benefit analysis suggests that companies should do away with the traditional paper-based delivery mechanisms and incorporate the current trend in technology.[978] However, the company must be satisfied that the mechanism employed is efficient, secure and accessible to members.[979] A company can only send individual notice of meeting to its members through electronic means where members have provided electronic mail addresses for service. Members may not be willing to provide their email addresses to the company except where there is a law that sanctioned the confidentiality of member's email addresses.[980] However, there is no such provision under the CAMA 1990 that recognised electronic service.

In Malaysia for example, there is equally a provision under the CA 2016 that recognised service of notice through the electronic form in addition to the hard copy of the notice.[981] The section[982] further provides that, "Unless otherwise provided in the Constitution, a notice- given in electronic form shall be transmitted to the electronic address provided by the member to the company for such purpose or by publishing on a website." This provision recognised not only the application of ICT but specifically, the use of electronic address or website to send or publish notice of meeting. The CA 2016[983] went further to provide that, "Notice of meeting of members shall not be validly given by a company by means of a website unless a notification to that effect is given in accordance with this section." In this regard, the validity of a notice

[977] Holzman and Mullen, fn. 976 at 57.
[978] Cross, Stuart R., "Corporate Governance, Information Technology and the Electronic Company in the United Kingdom," *Information & Communications Technology Law* 13.2 (2004): 117-128 at 125.
[979] *Ibid.*
[980] Aishah, fn. 163.
[981] s. 319(1)(b) & (c) CA 2016.
[982] s. 319(2); 319(2)(b) CA 2016.
[983] s. 320(1) CA 2016.

published on the website is subject to members being informed about the fact of such publication. The CA 2016[984] further explained that the notification should be in writing either in hard copy or electronic form stating the following: "That it concerns a meeting of members; the place, date and time of the meeting; and in the case of a public company, whether the meeting is an annual general meeting." Additionally, the CA 2016 provides that "notice shall be made available on the website throughout the period beginning from the date of the notification referred to in subsection (2) until the conclusion of the meeting."[985] In the same regard, section 326 of the CA 2016 provides:

> Where a company has given an electronic address in a notice calling a meeting, it shall be deemed to have agreed that any document or information relating to proceedings at the meeting including the appointment and termination of a proxy may be sent by electronic means to that address (subject to any conditions or limitations specified in the notice).

All the above provisions explicitly recognised the application of ICT/electronic medium to serve notice of AGM. This could be either through email given by members for the purpose of service or through publication on the company's website.

5.5 E-Meeting/ Virtual Legal Presence

It is the fundamental right of members to express their opinions at the AGM because it is the only forum where members personally meet the management.[986] Thus, e-meeting is one of the advances in technology that facilitates electronic presence via

[984] s. 320(2)(a)-(c) CA 2016.
[985] s. 320(3) CA 2016.
[986] Birnhak, Daniel, "Online Shareholder Meetings: Corporate Law Anomalies or the Future of Governance?" *Rutgers Computer and Technology Law Journal* 29 (2003): 423 at 444.

telecommunication.[987] Participation of members in this regard includes the right to communicate with other members and be heard, the right to listen to and read through the proceedings in real time, and the right to vote directly or by proxy.[988] There are very few judicial authorities on what constitutes a valid meeting. However, in the English case of *Byng v. London Life Association Ltd,*[989] the court declared on the validity of an AGM held in a separate room where members could see and hear other members with the aid of audio-visual links. This indicates the readiness of the court to facilitates the use of ICT in member's meeting.[990] Since then, the development of technology indicates the potentials that member's meeting can be enhanced with the use of ICT.[991] Departing from the traditional meeting, the court in *Wagner v. International Health Promotions,*[992] Santow J held that, "I agree that the words 'meet together' connote a meeting of mind made possible by modern technology and not of bodies."[993] The most crucial aspect is that the company must give members sufficient opportunity to participate in the meeting.[994]

E-meeting may be one of the most relevant forms of personal communication for its ability to facilitate the conduct of various tasks that includes voting, member's meetings through virtual or electronic presence. This could be using the Internet, video, or other communications avenue. E-meeting would give wider opportunity for

[987] Natale, Jessica M., "Exploring Virtual Legal Presence: The Present and the Promise." *J. High Tech. L.* 1 (2002): 157.
[988] Ali Hasani Mohd, Zinatul A. Zainol, and Nor Hayati Abdul Samat, "Some Legal Uncertainties in Electronic Corporate Meetings," *International Journal of Computer Theory and Engineering* 5.2 (2013): 284 at 287.
[989] *(1990) Ch 170.*
[990] Elizabeth, fn. 959 at 273; *Holzman v. New Horizons Learning Centre (Canberra) Pty Ltd (2004) 22 ACLC 446.*
[991] Cross, fn. 978.
[992] *(1994)15 ACSR 419.*
[993] *Wagner v. International Health Promotions (1994)15 ACSR* 421-422.
[994] Elizabeth, fn. 959 at 273.

members to participate in the AGM without geographical limit or boundaries.[995] It has the potentials to improve members participation at the AGM on the ground of inadequate space at the place/venue of the meeting.[996] It would also save members the expenses of travels and accommodation attending AGM.[997] One view suggests that e-meeting provides members with a cost-effective and transparent means of participation in AGM and governance issues.[998] It enables an individual or entity to substitute their physical presence with an alternate, through electronic presence on the internet and have their voices heard.

Though, virtual presence is not the same as physical presence (in the sense of being able to reach out and touch someone during a teleconference), nevertheless, it has many similarities with the physical presence.[999]

On the one hand, e-meeting was critised on certain grounds. One criticism is that, it is doubtful if the same level of emotion and sincerity can accompany electronic participation which physical participation imparts.[1000] Furthermore, voice quality and volume, facial expressions may be lacking during e-meeting.[1001] Additionally, e-meeting was criticised as a poor substitute that would prevent members from making

[995] Fontenot Lisa A., "Public Company Virtual-Only Annual Meetings," *Business Lawyer* 73, no. 1 (2017).
[996] Strätling Rebecca, "General Meetings: A Dispensable Tool for Corporate Governance of Listed Companies?" *Corporate Governance: An International Review* 11.1 (2003): 74-82.
[997] Patrick Kennedy, More Companies Embrace Virtual Annual Shareholder Meetings, *Star Trib*. (Mar. 9, 2017), https://phys.org/news/2017-03-companiesembrace-virtual-annual-shareholder.html (accessed April 29, 2018).
[998] Van der Krans, Anatoli, "The Virtual Shareholders Meeting: How to Make it Work," *J. Int'l Com. L. & Tech.* 2 (2007): 32; Gao Huasheng, and Jun Huang, "Can Online Annual General Meetings Increase Shareholders' Participation in Corporate Governance? Evidence from China," (2015).
[999] Natale, fn. at 987.
[1000] Keith Naughton, Ford's Annual Meeting is Virtual, but its Troubles Are Real, *Bloomberg Tech.* (May 10, 2017), https://www.bloomberg.com/news/ articles/2017-05-11/ford-s-annual-meeting-is-virtual-but-its-troubles-are-real.
[1001] Arvey, fn. 969.

the management more accountable.[1002] It is argued that majority members of a company may still attend the physical meeting while minority members may not participate online due to their small holding in the company.[1003] Similarly, adoption of ICT in corporate meetings is likely to expose companies to rigorous regulations by the regulators as well as overburden the company with liability for errors contained in information shared by the company.[1004]

The high cost incurred in attending AGM at a physical location is described as one of the problems that affect member's participation.[1005] It was argued that e-meeting would enable members to participate at the AGM, particularly members that reside at different locations.[1006] Whatever the argument, the proponent view is that e-meeting should not do away with the traditional face to face meeting.[1007]

The introduction of e-meeting under the Nigerian company law has to be a gradual process because as of 2008 only the State of Delaware and Denmark specifically made legislation on e-meeting.[1008] Bell & Howell Co was the first company in the US to start webcasting its AGM to supplement the physical meeting in 1996,[1009] which allows

[1002] Steven Davidoff Solomon, Online Shareholders Meetings Lower Costs, But Also Interaction, New York Times Deal Book (May 31, 2016), http://nyti.ms/1WX2FJI
[1003] Lipton Martin, and Steven A. Rosenblum, "A New System of Corporate Governance: The Quinquennial Election of Directors," *The University of Chicago Law Review* 58.1 (1991): 187-253; Jensen Michael C., "The Modern Industrial Revolution, Exit, and the Failure of Internal Control Systems," *The Journal of Finance* 48.3 (1993): 831-880.
[1004] Cross, fn. 978.
[1005] Gao and Jun, fn. 998.
[1006] Gao and Jun, fn. 998.
[1007] Company Law Review Steering Group, Department of Trade and Industry, United Kingdom, *Modern Company Law for a Competitive Economy: Company General Meetings and Shareholder Communication* (1999), 18-22. http://www.dti.gov.uk/cld/I840shar.pdf; Ali, Zinatul and Nor Hayati, fn.988 at 284; Aishah fn.
[1008] Pemmelaar, fn. 959.
[1009] Fairfax, Lisa M., "Virtual Shareholder Meetings Reconsidered," vol. 40 *Seton Hall Law Review* 1367 (2010).

individual members to listen to the meeting via the internet.[1010] There is a need for legislation that would see the success of transition from the traditional to the internet based meeting.[1011] Thus, e-meeting has its significant effects, at the same time, caution must be exercised before contemplating legislation that empowers companies to hold same.[1012]

5.6 Place/Venue of Meeting

The CAMA uses the word place of meeting while the RRNSE 2015 and the CCGPCN 2011 uses the word venue of meeting. Accordingly, they would be used interchangeably in this chapter. The CAMA 1990[1013] stipulates that all statutory and general meeting shall be held in Nigeria. Based on this provision, it may be inferred that the meeting is to be held at a physical place or location where members physically attend.[1014] It may be inferred that a company cannot conduct a meeting solely by electronic means.[1015] Under the CAMA 1990 the fact that a company hold its meeting where some members physically attend the meeting and at the same time webcasts or broadcasts its meetings for other members that were not physically in attendance shall have no legal effect in determining either the required quorum or participation. This is because, the law only recognised physical attendance, whether personally or by proxy.[1016] Similarly the RRNSE 2015 equally has no requirement for electronic

[1010] Fairfax, fn. 1009.
[1011]The European Directive on the Cross-border Exercise of Shareholders' Rights (December 31st, 2009).
[1012] Fairfax, fn.1009.
[1013] s. 216 CAMA 1990.
[1014] Bolodeoku, Ige Omotayo, "Going Virtual: Using Some Common Law World Initiatives to Update the Nigerian Law on Corporate Democracy," *Common Law World Review* 36.2 (2007): 106-135 at 112.
[1015]*Ibid.*
[1016] s. 230 CAMA 1990.

presence at the meeting. The Rule only states that the venue should be made easily accessible to the shareholders.[1017]

In Malaysia, the CA 2016 recognised holding of meeting in two or more venue. It provides, "subject to the Constitution; a company may convene a meeting of members at more than one venue using any technology or method that enables the members of the company to participate and to exercise the member's right to speak and vote at the meeting."[1018] The above provision is subject to the following conditions that, "the main venue of the meeting shall be in Malaysia, and the chairperson shall be present at the main venue of the meeting."[1019] One interesting thing is that regardless of the location the meeting is taking place, internet improves member's participation.

One of the essential issues that need to be considered by the Nigerian legislators in making a reform on member's meeting is whether companies should be allowed to hold meetings primarily by electronic means or should the companies conduct of meetings at physical locations concurrently.[1020] Critics described e-meeting as undemocratic and argued that it was introduced to promote a lack of corporate accountability. They further argued that the physical confrontation at a meeting between the members and the management ensures more accountability than e-meeting would accord to members.[1021] The critics argued that e-meeting is a form of

[1017] Rule 19.9(b) RRNSE 2015.
[1018] s. 327(1) CA 2016.
[1019] s. 327(2) CA 2016.
[1020] Elizabeth, fn. 959 at 286.
[1021] R. Simmonds, "Why must we Meet? Thinking about why Shareholders Meetings are Required," (2001) 19 *Company & Securities Law Journal* 506 at 515–16.

denial undermining the effectiveness of interactions and the management's sense of responsiveness and accountability.[1022]

5.7 The Telecommunication Industry in Nigeria

It is hard to talk about the application of ICT in Nigeria without referring to the telecommunication industry. The fast development of the Nigerian telecommunication sector and the rise in the internet usage suggests the need for reform that would fully integrate the Internet into the administration of corporate laws in Nigeria.[1023] Admittedly, there are challenges affecting internet access in Nigeria which shall be highlighted in this chapter. Nevertheless, the telecom industry Nigeria is now transforming at an alarming phase. Therefore, any reform that seeks to enhance the efficiency and affordability of communication avenue between the management of a company, and its members would be of great significance. One of the vital issues relating to the development of the telecommunications industry in Nigeria is the legal framework regulating the operations.[1024] This seen through the Nigerian Communication Commission (NCC) which was established by the Nigerian Communication Act.[1025] The NCC as the regulatory body in the telecommunications industry in Nigeria seeks to ensure better and efficient service delivery in the telecommunication industry. One of its major targets now is to enhance the use of ICT in various sectors of the Nigerian economy.[1026] Although there was a slow pace of the

[1022] Steven Davidoff Solomon, Online Shareholders Meetings Lower Costs, But Also Interaction, New York Times Deal Book (May 31, 2016), http://nyti.ms/1WX2FJI
[1023] Bolodeoku, Ige Omotayo, "Information Depository and Retrieval System for Nigeria: Exploring Some Common Law World Initiatives," I*nternational Company & Commercial Law Review* 17 (2006) 132.
[1024] Ndukwe, E. C.A., "Making ICT Available, Accessible and Affordable: Issues, Problems and Opportunities," (paper delivered at the 37th World Telecommunications Day Event, at Abuja, 17 May 2005), available at http://www.ncc.gov.ng/index10.htm (last visited on 21 June 2005).
[1025] S 3 Nigerian Communications Act 2003.
[1026] http://www.ncc.gov.ng/index (accessed May 20, 2017).

network, low-quality service delivery and weak infrastructure in the past, but the telecoms industry today is taking a new phase regarding development and the provision of services. This was facilitated by a series of reforms that seek to transform the sector by allowing private sector participation in the industry.[1027]

Currently, Nigeria is considered as one of the world's fastest-growing telecommunications markets.[1028] Based on the recent Report of the Nigerian Telecommunication Services Sector, 2016 (NTSSR) there is a significant improvement in the number of subscribers in the telecom industry. It is reported that as at the end of 2005 there were only 19,519,154 subscribers, but by December 2015 there were 151,017,244, which signifies an increase of about 13,149,809 every year.[1029] The same Report indicates the total number of Global System for Mobile Communications (GSM) subscribers as at March 2016 was 147,398,854, which represents an increase of 5,756,018, or 4.06% compared to the statistics in March 2015.[1030] This shows the significant improvement regarding subscription in Nigeria. On the one hand, the NTSSR[1031] equally reported:

> Of all GSM users, a total of 92,285,052 had an internet subscription with one of the four carriers of Airtel, Etisalat, Globacom and MTN in March 2016. This means that of all the active GSM lines, 62.61% had an internet

[1027] Ndukwe, fn. 1024.
[1028] Connors, Would, and D. Maylie, "Nigeria Gives Huawei a Place to Prove Itself," *Wall Street Journal* (2011); Ojo, Tokunbo, "Political Economy of Huawei's Market Strategies in the Nigerian Telecommunication Market." *International Communication Gazette* (2017).
[1029] Nigerian Telecommunications (Services) Sector Report, (2016) by the National Bureau of Statistics. Also available online at www.nigerianstat.gov.ng/ (accessed May 20, 2017); Telecommunications spur growth in GDP available on http://www.vanguardngr.com/2016/02/telecommunications-spur-growth-in-gdp/ (accessed May 20, 2017).
[1030] Nigerian Telecommunications (Services) Sector Report (2016) by the National Bureau of Statistics. Also available online at www.nigerianstat.gov.ng/ (accessed May 20, 2017); Telecommunications spur growth in GDP available on http://www.vanguardngr.com/2016/02/telecommunications-spur-growth-in-gdp/ (accessed May 20, 2017).
[1031] *Ibid.*

subscription. Throughout most of 2014 and 2015 this proportion had been following an upward trend.

On the method of internet subscription, the NTSSR[1032] states that data subscription is divided into four methods, but the most widely used is the GSM with 99.09% usage as of December 2015 and "core division multiple access" (CDMA) with 0.79% usage. Based on the above statistic, one may draw an inference that a significant percentage of mobile subscribers have access to the internet in Nigeria being the most widely and dominant means of internet access in Nigeria. The essence of citing the above statistics is to highlight on the current status of Internet access in Nigeria since this chapter focuses on the application of ICT in improving member's participation in AGM under Nigerian company law. In this regard, the Managing Director of Ntel (a multinational telecom company) mentioned, with a population of more than 170 million, the potential for ICT in Nigeria is massive and, it is one of our most important markets.[1033] The role played by the government in the telecom industry is now more of regulation and policy formulation through the NCC.[1034] The liberation of the telecommunication sector in Nigeria facilitates high usage of smartphones and as a result, improved Internet access in virtually all sectors.[1035] In the same vein, companies now use social media sites to share information to its members including notice of

[1032] Telecommunications spur growth in GDP available on http://www.vanguardngr.com/2016/02/telecommunications-spur-growth-in-gdp/ (accessed May 20, 2017).
[1033] "Nigeria's Shifting Telecoms Landscape," (2016). http://www.oxfordbusinessgroup.com/ (accessed May 20, 2017).
[1034] Mawoli, M., "Liberalization of the Nigerian Telecommunication Sector: Critical Review," *Journal of Research in National Development,* vol. 7, no. 2, (2009) 102-124; Adi, Bongo, "An Evaluation of the Nigerian Telecommunication Industry Competitiveness: Application of Porter's Five Forces Model," *World* 5.3 (2015).
[1035] Onuigbo Richard Amaechi, and Okechukwu Innocent Eme, "Electronic Governance & Administration in Nigeria: Prospects & Challenges," *Arabian Journal of Business and Management Review (Oman Chapter)* 5.3 (2015): 18.

meeting.[1036] Various challenges affect e-corporate governance in Nigeria. However, with a fully privatized and opened telecoms sector, its prospects are bright.[1037]

5.7.1 Challenges from Members

In Nigeria, those that invest in shares are mainly the working class, most of whom reside in the cities where Internet services are readily available.[1038] However, for one to have uninterrupted access to the internet, a subscriber must procure a power generating plant and be able to maintain it. The cost of a standby power generator and of sustaining it, when added to the monthly costs of subscribing internet data, limits the number of people who can enjoy an Internet facility at home.[1039] Another challenge on the use of ICT could be where a member was unable to attend a meeting due to non-availability of network or the internet.[1040] The kind of Internet connections that a member has would determine the quality and type of content they can receive.[1041] Other challenges include slow web responses, server failure.[1042] These challenges should equally be borne in mind by the legislature in Nigeria in reforming the company law.

5.7.2 Challenges for the Management

Companies in Nigeria may face particular challenges in putting advanced ICT facilities that may see to the effective conduct of e-meeting. However, the challenges may be overcome where companies can acquire the right technology to conduct e-meeting and

[1036] Onuigbo & Okechukwu, fn. 1035.
[1037] Elizabeth, fn. 959 at 134.
[1038] *Ibid* at 132.
[1039] J. Ameh, "Internet Access Still Expensive in Nigeria," (2005, 6 June) *The Punch (Online News)* available at http://odili.net/news/source/2005/jun/6/500.html
[1040] Sambhar, fn. 965.
[1041] Birnhak, 986 at 436.
[1042] Ali, Zinatul and Nor Hayati, fn.988.

broadcasts the proceedings over the Internet. The technology needed is such that emphasised on the quality of the audio and video.[1043] Furthermore, cameras and microphones should be used to capture the meetings. Similarly, there is need to use computers with special video features that compress the data and change it into streamed media format.[1044] These are some of the devices that companies must consider while contemplating e-meeting. All these advanced gadgets centered on the issue of affordability.

However, companies that are unable to afford the costs of deployment of the above gadgets may contemplate the option of outsourcing them.[1045] As at 2007, no single company in Nigeria that does web broadcasting.[1046] However, Respondent 1 mentioned, "There is a company in Jos which does e-meeting. They just deliberate the agenda and circulate emails to the shareholders and give them time to study the agenda, after that they meet."[1047] This shows the prospect of conducting e-meeting by Nigerian companies soon. It is argued that companies are generally in a position to arrange for e- meetings because of their financial capability. They can upgrade their systems and, they can even contract out the job to another company. This is unlike the ordinary members of the company that may not have the financials to upgrade their systems where they are unable to access the meeting.[1048] Various reasons that hinder the successful operation of e-meeting were given, including expense for a system upgrade,

[1043] Birnhak, fn. 986 at 429.
[1044] *Ibid* at 429.
[1045] *Ibid* 434.
[1046] Elizabeth, fn. 959 at 134.
[1047] R1 (Lecturer), interviewed by researcher, Jos, Nigeria, November 6, 2016.
[1048] Birnhak, fn. 986 at 435.

networking equipment.[1049] These are some of the challenges that should be considered by the Nigerian legislators in making a reform to the law.

5.8 The Amendment of the CAMA 1990

The Director General of the CAC maintained that it is obvious that Nigerian corporate law needs reform. The CAMA 1990 has become an impediment for global business in Nigeria.[1050] The provisions of the CAMA 1990 as the principal company law in Nigeria has become obsolete by global corporate law and governance standard. Part of the amendments were based on current practices that evolved over the years.[1051] There is a bill before the National assembly that seeks to amend the CAMA 1990 in 2016 but still the bill has not been pass into law. Assuming the bill has been passed into law, the findings in this study will still have impact for further reform of the law. Further discussion on the need to amend the CAMA 1990 would come from the perspective of the respondents.

5.9 Application of ICT under CAMA 1990 from Perspectives of the Respondents

5.9.1 Themes and Sub themes

The theme(s) in this chapter emerges based research question three while the sub themes were based on the response gotten from the respondents. This shall be seen in the table below:

[1049] Birnhak, fn. 986 at 435.
[1050] Nnabugwu, fn. 827.
[1051] Ifeanyi Onuba, "CAC prepares Companies' Act amendment Bill" Punch (August 8, 2016). http://punchng.com/cac-prepares-companies-act-amendment-bill/ (accessed June 3, 2017); "Law Reform Committee Recommend New Breadth to CAMA Act," National Institute for Legislative Studies (March 27, 2017). http://www.nils.gov.ng/news/item/143 (accessed June 3, 2017).

Table 5.1 *Themes and Sub themes for Research Question Three*

Research Question	Theme(s)	Sub themes
How can application of ICT improve members participation in the AGM under Nigerian company law	The application of ICT in company meeting	Lack of recognition of ICT under the CAMA 1990
		Electronic communication methods
		The use of ICT in improving member's participation in the AGM
		E-Meeting
		The prospect of using ICT in company meeting

Based on the above table, one theme emerged while six sub themes emerged from the interview. This would be reported and analyse accordingly.

5.9.2 Lack of Recognition of ICT Under the CAMA 1990

In this regard, fifteen respondents were asked on the lack of recognition of ICT (LRICT) under the CAMA 1990. Their response is seen below:

Table 5.2 *Recognition for ICT under the CAMA 1990*

Respondent	LRICT
R1	Lack of recognition for ICT and should be amended
R2	Lack of recognition for ICT and should be amended

R3	Lack of recognition for ICT and should be amended
R4	Lack of recognition for ICT and should be amended
R6	Lack of recognition for ICT and should be amended
R7	Lack of recognition for ICT and should be amended
R8	Lack of recognition for ICT and should be amended
R9	Lack of recognition for ICT and should be amended
R10	Lack of recognition for ICT and should be amended
R11	Lack of recognition for ICT and should be amended
R13	Lack of recognition for ICT and should be amended
R14	Lack of recognition for ICT and should be amended
R15	Lack of recognition for ICT and should be amended
R16	Lack of recognition for ICT and should be amended

The above table shows that all the fourteen respondents unanimously agreed that the CAMA 1990 lacked provision recognising the application of ICT in corporate meetings at all. The respondents were of the view that, the CAMA 1990 should make provision that recognises the application of ICT in all aspects of the corporate meeting, including sending of notice, voting and probably e-meetings. From the excerpt, Respondent 10 mentioned:[1052]

> *My own opinion is that ICT is very important, looking at the way the world now is. It is almost like a global village, and with the introduction of ICT, so many things are being simplified and even me as a company secretary, I have seen the importance of ICT regarding executing my duties or discharging my responsibilities as a company secretary.*

The above view explained the relevance of ICT to a corporate meeting. Accordingly,

[1052] R10 (Company Secretary), interviewed by researcher, Kano, Nigeria, October 24, 2016.

Respondent 15 explained:[1053]

> *Before now, registration of companies at the CAC were done manually. If you want to conduct a search in respect of a business name that was registered in Lagos, you have to pay somebody, or you go to Lagos and conduct the search, but because of the advent of ICT, now you can sit down here and conduct your search and do almost everything from here. In fact, if your application is ready here, we either sent a message to you through e-mail or through your phone. I am sure some of these companies, there is no any person that can afford to buy shares in Nigeria that cannot afford to buy a phone and get a phone number.*

When asked about recognition of ICT under CAMA 1990 Respondent 9 stated:[1054]

> *When you look at the law, there is no place where the use of ICT is mentioned. I honestly think that stakeholders need to come together and take a position and possibly channel that to the National Assembly and see how it could be repealed. The use of ICT should be taking into consideration under the CAMA, particularly for public companies, because we should be moving with time.*

Responding to the same issue, Respondent 2 states, "I believe our company laws should be ICT compliant."[1055] In the same context, Respondent 3 explained:[1056]

> *The CAMA is a legislation of the 1990s. It was enacted in 1990, and when it was enacted, the world has not developed to this extent. Therefore, it is understandable that it has not made any provision regarding the e-meeting and the like. Technology is a necessary imperative today, it is permitting all aspects of our lives, and all successful corporate organisations employ technology to facilitate their production processes. Therefore, the company management structure and the legal framework should also move with the time so that there should be a recognition of the role that technology can play in advancing corporate management and administration in Nigeria.*

The above views were to the effect that the CAMA 1990 should reflect the global trend in ICT. In a similar view Respondent 4, "The CAMA needs to be reviewed to

[1053] R15 (Regulator), interviewed by researcher, Bauchi, Nigeria, November 28, 2016.
[1054] R9 (Company Secretary), interviewed by researcher, FCT Abuja, Nigeria, November 14, 2016.
[1055] R2 (Lecturer), interviewed by researcher, FCT Abuja, Nigeria, October 27, 2016.
[1056] R3 (Lecturer), interviewed by researcher, Kano, Nigeria, October 26, 2016.

incorporate present realities. The world is going "e," everything is "e." It would be a welcome development that companies should also try to incorporate ICT in holding AGM."[1057] In his response, Respondent 10 opined, "I highly recommend ICT to be incorporated, but the problem is that the CAMA 1990 did not make specific reference to ICT regarding corporate meetings. There is the need to amend the CAMA 1990 to reflect the global and current happenings in the world."[1058] The above view re affirmed the inadequacy of the CAMA 1990 to reflect current development regarding ICT. In the same context, Respondent 11, "More people are now moving towards ICT. The framework and the law should be amended to accommodate the changes that are now in the society, particularly IT. Most of the things would be done to allow members participation."[1059] Respondent 13 added, "It is high time we embrace ICT in our corporate meetings. We don't have to be stagnant. I therefore strongly recommend the use of ICT in our meetings."[1060] Similarly, Respondent 14, "It is the right time for our law to take into cognisance the use of ICT in corporate meetings. I believe if ICT is used in our laws it would do a lot of good to the existing practice and almost all the problems in respect of notices and voting would become history."[1061] Likewise, Respondent 16 was of the view that, "Amending our laws in the Nigerian context to allow ICT to be used is a welcome idea. Adopting ICT in our laws would solve about 80% of the problems."[1062] The above view emphasised on the inability of the CAMA 1990 to reflect the current development in ICT.

[1057] R4 (Lecturer), interviewed by researcher, Zaria, Kaduna, Nigeria, November 24, 2016.
[1058] R10 (Company Secretary), interviewed by researcher, Kano, Nigeria, October 24, 2016.
[1059] R11 (Company Secretary), interviewed by researcher, FCT Abuja, Nigeria, November 13, 2016.
[1060] R13 (Company Director), interviewed by researcher, Kano, Nigeria, December 9, 2016.
[1061] R14 (Company Director), interviewed by researcher, Lagos, Nigeria, December 10, 2016.
[1062] R16 (Regulator), interviewed by researcher, Kano, Nigeria, November 21, 2016.

However, Respondent 1 maintained, "We have to recognise the use of ICT. I am aware that CAMA is undergoing a review and the Law Reform Commission has concluded the review, which some of us have to look at and use of ICT is one of the areas of focus, not just for the conduct of meetings, for surveillance and investigations."[1063] In his response, Respondent 6 added, "The review of CAMA would include ICT, but I just want to assure you that already ICT is being implemented in the AGMs."[1064] Respondent 7 was of the view that, "Anything you know can help to facilitate your business, you don't wait for the law to recommend it for you."[1065] According to Respondent 8, "The only thing that is constant is change and whether we like it or not the internet is the best. Everything now we use the internet. It is better if the law and shareholders embrace it and that is better for us."[1066] The above by Respondent 8 maintained that time has come for CAMA 1990 to take cognizance of ICT in corporate meetings. In this regard, Respondent 11 also believed:[1067]

> *The CAMA 1990 needs to be amended, and we believed with amendment comes advancement, taking care of all developmental strides and issues. It is just for the amendment to be done. We believed that in amending our existing laws, the law makers normally bench mark advanced countries, countries that have advanced in terms of the way they run their companies and organisations. If the amendment is effected, ICT would be integrated as an integral part of our law. ICT, as we all know, is what is driving businesses all over.*

The above view also sided with the earlier view that pointed out to the lack of recognition of ICT under CAMA 1990 as a barrier to member's participation in the AGM in Nigeria. In this study, references were made to the CA 2006 and CA 2016

[1063] R1 (Lecturer), interviewed by researcher, Jos, Nigeria, November 6, 2016.
[1064] R6 (Shareholder activist), interviewed by researcher, Kano, Nigeria, November 21, 2016.
[1065] R7 (Shareholder activist), interviewed by researcher, FCT Abuja, Nigeria, October 27, 2016.
[1066] R8 (Shareholder activist), interviewed by researcher, Lagos, Nigeria, December 12, 2016.
[1067] R11 (Company Secretary), interviewed by researcher, FCT Abuja, Nigeria, November 13, 2016.

respectively, because they all advanced in ICT and its application has reflected under both laws hence the comparison with CAMA 1990.

5.9.3 Electronic Communication Methods

In this regard, fourteen respondents were asked method(s) to be used in sending notice of meeting via an electronic medium (EMSN). Their response is seen below:

Table 5.3 *Methods of Service of Notice*

Respondent	EMSN
R1	Email or text messages
R2	Social media
R3	Email
R4	Not specific
R5	Email or text messages
R6	Email or website
R7	Email
R8	Email, text messages or social media
R9	Email
R10	Not specific
R11	Social media
R13	Email, website & so on
R15	Email
R16	Social media

The above table indicates that nine respondents (R1, R3, R5, R6, R7, R8, R9, R13 & R15) out of fourteen respondents representing about 64.2% were of the view that the CAMA 1990 should incorporate the use of email as a method of serving notice of meeting to members. On the one hand, four respondents (R2, R8, R11 & R16) representing 28.5% maintained that social media platform should be incorporated

under the CAMA 1990 as a method of serving notice. Lastly, two respondents (R6 & R13) maintained that website should be the method of service under the CAMA 1990.

From the excerpt, Respondent 10 stated, "There are so many platforms under ICT where instant messages would be sent to the recipient or to a member to whom that notice is intended to be served, and there would be an acknowledgement instantly that a member has received that particular message. There are so many options on that platform."[1068] Thus, Respondent 10 was not specific on the electronic method to be used under the CAMA 1990. Respondent 13 maintained:[1069]

> *The law should recommend for the use of various means of communication through ICT like emails, websites and so on and it would equally help in ensuring transparent voting at AGM. They should operate alongside the existing paper-based notice because we are not yet advanced technologically.*

On the use of email to inform members about the meeting, Respondent 7, "You can use e-mail. And companies, particularly banks have branches nationwide. They can send the notices through their branches. Any system that would give you a real outcome should be supported. Eliminate any form of manipulation."[1070] In the same context, Respondent 9 believed, "It would be easier if notices are sent to member's email addresses."[1071] Respondent 11 mentioned, "You can now serve notices through e-mails."[1072] Similarly, Respondent 15 said:[1073]

> *At least majority of us 60-70% of Nigerians have e-mail addresses. It is only those that did not go to school, some of them have email. Some companies have started communicating to their members through e-*

[1068] R10 (Company Secretary), interviewed by researcher, Kano, Nigeria, October 24, 2016.
[1069] R13 (Company Director), interviewed by researcher, Kano, Nigeria, December 9, 2016.
[1070] R7 (Shareholder activist), interviewed by researcher, FCT Abuja, Nigeria, October 27, 2016.
[1071] R9 (Company Secretary), interviewed by researcher, FCT Abuja, Nigeria, November 14, 2016.
[1072] R11 (Company Secretary), interviewed by researcher, FCT Abuja, Nigeria, November 13, 2016.
[1073] R15 (Regulator), interviewed by researcher, Bauchi, Nigeria, November 28, 2016.

mail addresses. It all depends on your arrangement. It saves cost. If you sent notices by courier, you would pay, but if you sent through e-mail, you pay less.

The above view pointed out that, the majority of the percentage of Nigerian have access to mobile phone and have email addresses. This means that notice of AGM may be sent through email addresses and members can receive it within a short period. However, in a contrary view, Respondent 9 queried, "The question is, how many members have email addresses or how many of them are ICT compliant? So, how to get this preposition becomes law, for example through necessary channels."[1074] Respondent 6 still maintained, "I am sure if it is adopted would save the company money, and if they save money, we would get more dividend."[1075] On the time of delivery of notices sent by electronic means, Respondent 4 stated, "Notice should be deemed sent immediately it is posted by the company and should be deemed received after seven days from the date it was sent."[1076] The seven days after service is similar to the requirement under CAMA 1990 that notice sent by post is deemed delivered after seven days of service.

According to Respondent 5, "I would recommend sending notices via text messages or emails so that they can be received anywhere on time before the 21 days."[1077] According to Respondent 1, "You can give notice to individuals through their e-mail addresses, through phone calls or text messages…That may help in solving the problems of postal services because the postal service in Nigeria has collapsed." This

[1074] R9 (Company Secretary), interviewed by researcher, FCT Abuja, Nigeria, November 14, 2016.
[1075] R6 (Shareholder activist), interviewed by researcher, Kano, Nigeria, November 21, 2016.
[1076] R4 (Lecturer), interviewed by researcher, Zaria, Kaduna, Nigeria, November 24, 2016.
[1077] R5 (Lecturer), interviewed by researcher, Kano, Nigeria, October 25, 2016.

channel, if used, would be faster and would improve the system of given messages."[1078] Thus, a text message is equally regarded as a method of sending notice of the meeting. The CAMA 1990 provides publication of notice of meeting in newspapers as a means of sending notice. However, Respondent 16 maintained:[1079]

> *The coming of social media has reduced the level of usage of newspapers by so many people because you can also get news on the social media. So, apart from the two national dailies required by law, companies can also use the social media to send notices and information to shareholders.*

The above view was to the effect that, social media may also be used as a way of informing members about AGM. In a similar view, Respondent 11 added, "Most companies they try to use the social media platform and all other available avenues to see that they communicate."[1080] Respondent 8 equally added, "Companies can use email, text messages or even the social media to send notice of AGM."[1081] According to Respondent 2, "I think even the social media like Facebook can be incorporated. WhatsApp might be difficult to manage."[1082]

However, Respondent 3 was of the view that email can be one method of sending notice to members, but the law should not be specific about a particular method due to dynamics in ICT technology. Respondent 3 stated:[1083]

> *Emails would be good, but one good thing about technology is that is dynamic. It is changing every day. This e-mail you see today might not be there tomorrow. It would be dangerous to use specific recommendation with regards to e-mail, social media, because technology is evolving. Tomorrow you would have totally different, more efficient and effective technology that can serve the purpose. The*

[1078] R1 (Lecturer), interviewed by researcher, Jos, Nigeria, November 6, 2016.
[1079] R16 (Regulator), interviewed by researcher, Kano, Nigeria, November 21, 2016.
[1080] R11 (Company Secretary), interviewed by researcher, FCT Abuja, Nigeria, November 13, 2016.
[1081] R8 (Shareholder activist), interviewed by researcher, Lagos, Nigeria, December 12, 2016.
[1082] R2 (Lecturer), interviewed by researcher, FCT Abuja, Nigeria, October 27, 2016.
[1083] R3 (Lecturer), interviewed by researcher, Kano, Nigeria, October 26, 2016.

> *most important thing is for the CAMA to recognise the evolving role of technology. That it should be recognised as a potent means of addressing the challenges we faced today in corporate management.*

Sharing his practical experience on the electronic method of sending notice of meeting, Respondent 6, "Like I said, some of us have given the companies our e-mail, they just send it to your e-mail, which is lighter regarding postal service charge, much lower. Again, the website of the company is even used. I assure you by the time the CAMA is amended, you would not see a printed copy of an annual account."[1084] This indicates that already some companies in Nigeria have started using email to send notice of meeting to their members. However, there is no legal provision under the CAMA 1990 that recognised ICT in general. On the one hand, Respondent 6 was of the view that website may be one of the methods of informing members about meeting. Respondent 6 maintained:[1085]

> *The world has advanced, I don't even bother about the daily newspapers. I just go to the website of the company. I would see all the information, their directors, their management staffs, their performance when they are going to have the AGM, the annual accounts, quarterly accounts, everything you see it there. Even if you have not seeing the publication in the paper, like today the website is there.*

5.9.4 The Use of ICT in Improving Member's Participation in the AGM

In this regard, five respondents were asked on whether application of ICT would improve member's participation in the AGM in Nigeria (IIMP). Their response is seen next:

[1084] R6 (Shareholder activist), interviewed by researcher, Kano, Nigeria, November 21, 2016.
[1085] R6 (Shareholder activist), interviewed by researcher, Kano, Nigeria, November 21, 2016.

Table 5.4 *Application of ICT in Service of Notice of AGM*

Respondent	IIMP
R8	Yes
R9	Yes
R10	Yes
R11	Yes
R16	Yes

The above table indicates that all the five respondents held the view that the use of ICT would greatly improve member's participation at the AGM in Nigeria. From the excerpt, Respondent 16 stated, "Application of ICT would help greatly. A lot of people unlike before, they are now using so many avenues in social media; emails. People are using the phone to access the corporate website and so on. I think it would greatly assist the shareholders in getting information about their investment."[1086] The above pointed to the fact many Nigerians including members of a company now have access to the internet, and this would help in improving their participation. In a similar view, Respondent 8 added, "I believe the application of ICT would improve member's participation in corporate meetings."[1087] Respondent 10 maintained that the application of ICT in corporate under the Nigerian corporate law should replace the paper based method, particularly in sending notices. He said, "They should go concurrently."[1088] This signifies that the paper-based method equally has some importance attached to it. Responding in the same context, Respondent 9 equally believed, "ICT would generally improve participation of members. The use of ICT would cover the whole thing."[1089] Respondent 11 added, "The application of ICT

[1086] R16 (Regulator), interviewed by researcher, Kano, Nigeria, November 21, 2016.
[1087] R8 (Shareholder activist), interviewed by researcher, Lagos, Nigeria, December 12, 2016.
[1088] R10 (Company Secretary), interviewed by researcher, Kano, Nigeria, October 24, 2016.
[1089] R9 (Company Secretary), interviewed by researcher, FCT Abuja, Nigeria, November 14, 2016.

would be a great way to improve participation of AGM by shareholders."[1090] The above view equally emphasised how ICT would improve member's participation in the AGM. According to Respondent 10,[1091] "Application of ICT to some extent it would improve member's participation." Although he was optimistic about how ICT would improve member's participation, he explained:

> *The problem in Nigeria is that those in the urban area have facilities in terms of ICT, but at times those in the rural area they tend to have difficulty in accessing ICT. There might tend to be difficulty from their part, but notwithstanding, generally when you take it based on percentage, you would observe that 65% or 70% have access. There would be tremendous improvement whereby members would be able to attend meetings and to know exactly the content of the meetings so that they would know what to come to the meeting with. ICT would improve upon that.*

The above opinion explained the nature of the challenge that may hinder the application of ICT particularly to members of a company that resides in rural areas in Nigeria. However, since the internet can be accessed using mobile phones which many Nigerians have access to it nowadays, it is likely to affect only small percentage of members without internet access.

5.9.5 E-Meeting

Under this heading, eleven respondents were asked on whether e-meeting should be incorporated under the CAMA 1990 (EM). The summary of the response is seen next:

Table 5.5 *E-Meeting*

Respondent	**EM**
R1	Should be incorporated under CAMA 1990

[1090] R11 (Company Secretary), interviewed by researcher, FCT Abuja, Nigeria, November 13, 2016.
[1091] R10 (Company Secretary), interviewed by researcher, Kano, Nigeria, October 24, 2016.

R2	Should be incorporated under CAMA 1990
R3	Should be incorporated under CAMA 1990
R4	Not yet time
R6	Should be incorporated under CAMA 1990
R9	Should be incorporated under CAMA 1990
R11	Should be incorporated under CAMA 1990
R13	Should be incorporated under CAMA 1990
R14	Should be incorporated under CAMA 1990
R15	Should be incorporated under CAMA 1990
R17	Should be incorporated under CAMA 1990

The above table indicates that ten respondents (R1, R2, R3, R6, R9, R11, R13, R14, R15 & R17) out of eleven which represents 90.9% opined that e-meeting needs to be incorporated under the CAMA 1990. That would give room for more participation of members from wherever they are. On the one hand, only one Respondent (R4) was of the view that is not the time for the CAMA 1990 to adopt e-meeting because Nigeria is not developed regarding ICT. From the excerpt, Respondent 3 stated:[1092]

> *We need to be moving with time, even though I alluded to the fact that our country is undeveloped (technologically), we have now reached the point of having e-meetings, where you don't need to walk from Abuja to Lagos or from Kano to Lagos to attend the meeting. This is what we called e-meeting that you could be able to express yourself and be visualized as part of those that were in the meeting and anywhere in the world and wherever you are, you can participate in the meeting. We need to strengthen the legal framework in this country to recognise the*

[1092] R3 (Lecturer), interviewed by researcher, Kano, Nigeria, October 26, 2016.

> *shift technologically so that we don't rely on physical meetings only. We can also use the visual e-meeting, that would also help a lot in addressing the issue of holding the meeting at the headquarters of the company.*

The above view explained the need for the CAMA 1990 to reflect ICT particularly as it relates to e-meeting. In this regard, Respondent 6 maintained that "We are even heading towards electronic AGM in the future, we are looking at it where by you would just connect to the venue, and you can now ask questions, you can vote electronically."[1093] In the same context, Respondent 13 believed, "It would be a welcome development, but it has to be a gradual process. This would certainly improve greater participation of shareholders in corporate meetings."[1094] Similarly, Respondent 9 added, "It is a fantastic idea, and it is the best thing that would happen to corporate law. Personally, it is very acceptable to me, and for every company secretary I think it is very important."[1095] In his response, Respondent 3 believed:[1096]

> *One way of addressing the problem of notice and venue and addressing the problem of disenfranchising shareholders is to allow electronic meetings so that all shareholders would be avail of the opportunity to participate at the meeting of the company. This is a reflection of the global trend. That is what is happening in other jurisdictions.*

Based on the above views, e-meeting would help in improving member's participation at the meeting, even though it is full effect must be a gradual process. According to Respondent 14:[1097]

> *When we are talking about advancement, we need to take into account that corporations are the best place to use technological advancement. The use of ICT would facilitate meeting of members without the constraint of choosing the venue and other things. However, we have*

[1093] R6 (Shareholder activist), interviewed by researcher, Kano, Nigeria, November 21, 2016.
[1094] R13 (Company Director), interviewed by researcher, Kano, Nigeria, December 9, 2016.
[1095] R9 (Company Secretary), interviewed by researcher, FCT Abuja, Nigeria, November 14, 2016.
[1096] R3 (Lecturer), interviewed by researcher, Kano, Nigeria, October 26, 2016.
[1097] R14 (Company Director), interviewed by researcher, Lagos, Nigeria, December 10, 2016.

certain constraint in Nigeria, but as time goes, everything would be alright.

The incorporate of e-meeting under CAMA 1990 is likely to eliminate the challenge faced by members as relates to the place of meeting, since e-meeting does not require the physical attendance of members. In this regard, Respondent 15 stated:[1098]

The essence of meeting is to agree on certain things. If you look at it critically, by allowing for the acceptance of written resolution, definitely it has taken care of physical presence. Because if you can sit down in Lagos, they would just send you the proposal, then you vote; you sign. We now accept electronic signatures. For every general rule, there is always an exception. While the law says, all meetings should be held in Nigeria, but the same law (this old law) recognises written resolution. It does not matter where you are coming from and where you are. When you find it difficult to gather all members together, you can say let us pass a written resolution in respect of this issue "I agree, I disagree" you set the content "I agree with that, I disagree with that, " and the secretary would compile everything.

Respondent 17 opined, "It would ensure openness in transactions, and each and every member of the company can freely participate from the comfort of his home or office. You can just sit down and partake in the AGM processes."[1099] Respondent 1 mentioned, "There is a company in Jos which does e-meeting. They just deliberate the agenda and circulate emails to the shareholders and give them time to study the agenda, after that they meet."[1100] That signifies that e-meeting if incorporated under the CAMA 1990 may be effected since at the moment Respondent 1 cited an instance where e-meeting was conducted. Respondent 6 mentioned:[1101]

We are now thinking of having electronic AGM. We want to go to Turkey and see how it is done there. A lot of things even the annual

[1098] R15 (Regulator), interviewed by researcher, Bauchi, Nigeria, November 28, 2016.
[1099] R17 (Regulator), interviewed by researcher, FCT Abuja, Nigeria, November 22, 2016.
[1100] R1 (Lecturer), interviewed by researcher, Jos, Nigeria, November 6, 2016.
[1101] R6 (Shareholder activist), interviewed by researcher, Kano, Nigeria, November 21, 2016.

> *account, now you go to a website which is also part of ICT. Gradually, everything is moving in that direction. I have been advocating that one of the directors in the board should be somebody that is very knowledgeable in ICT otherwise an executive director or a senior management officer because the trend in the world now is changing and this ICT is what would make companies to progress.*

However, Respondent 2 was of the view that, a video conference can also be a method for members to meet. He mentioned, "There is also the need for the companies to come in. They have regional offices. They can establish video conferencing centres. There would be virtual participation in so doing."[1102] In the same way, Respondent 11 added, "You can be holding meeting across the Federation concurrently/simultaneously using video conferencing and other platforms. ICT would play a very significant role in corporate meetings."[1103] Respondent 9 equally believed:[1104]

> *We can hold a meeting in this conference room and if the meeting is held here, we have centers in some states and our AGM is holding so a member can go to a particular center, you see what is happening (through teleconference) and you can vote from there. I think that should be taken into consideration. One may not have the time of travelling to Abuja, but if there is a center you can attend and vote.*

On the one hand, Respondent 15 also acknowledged that "Anything "e" is a welcome development." Respondent 15 added:[1105]

> *That does not mean it doesn't have its problem. It depends on the members. The law has not made it compulsory for a company to call e-meeting, but the members can agree. The essence of an article of association of a company is for the company to make regulation governing the relationship amongst its members. All these things members can agree that in addition to statutorily recognised meetings, we also want this.*

[1102] R2 (Lecturer), interviewed by researcher, FCT Abuja, Nigeria, October 27, 2016.
[1103] R11 (Company Secretary), interviewed by researcher, FCT Abuja, Nigeria, November 13, 2016.
[1104] R9 (Company Secretary), interviewed by researcher, FCT Abuja, Nigeria, November 14, 2016.
[1105] R15 (Regulator), interviewed by researcher, Bauchi, Nigeria, November 28, 2016.

In a contrary view, Respondent 4 claimed, "Many of our shareholders in the country are not used to IT, so e-meeting, for now, I would not subscribe to it until we reach a more advanced stage in ICT than now."[1106] According to Respondent 4, it is not the time to adopt e-meeting. In this regard, Respondent 6 mentioned, "We are now trying to see how we can implement it. Turkey was given as a good example, and we want to visit Turkey and see how it is implemented whether there are problems we should be aware of. Certainly, if this is done, it would be very good for this country."[1107] Although there are shortcomings relating to the effective operation of e-meeting, the majority of the respondents were hopeful that e-meeting would help to improve the significant percentage of member's participation at the AGM in Nigeria.

5.9.6 The Prospect of ICT in Company Meeting

In this regard, six respondents were asked about the prospect of using ICT in company meetings (PICT) under the CAMA 1990. Their response is presented below:

Table 5.6 *The Prospect of ICT*

Respondent	PICT
R1	There is prospect
R2	There is prospect
R5	There is prospect
R7	There is prospect
R9	There is prospect
R12	There is prospect

Based on the above table, all the six respondents (R1, R2, R5, R7, R9 & R12) agreed that there is prospect of using ICT under CAMA 1990 to improve member's

[1106] R4 (Lecturer), interviewed by researcher, Zaria, Kaduna, Nigeria, November 24, 2016.
[1107] R6 (Shareholder activist), interviewed by researcher, Kano, Nigeria, November 21, 2016.

participation. However, Respondent 12 was particularly concerned that there are challenges now that may affect the application of ICT in company meetings but still, he was optimistic about it. From the excerpt, Respondent 1 maintained:[1108]

> *We cannot close our eyes on ICT. We have to recognise it. Technology is everywhere. There was a case I witnessed in the USA where a Nigerian defended his PhD thesis, and his supervisors are at the comfort of their offices with the help of ICT. The use of ICT in our corporate meetings would help in solving many problems.*

Respondent 7 believed that "If the law can make provision for ICT, it is okay. Everybody wants things to be easier and faster. Make sure the right environment is there."[1109] Thus, Respondent 7 was optimistic about the application of ICT in corporate meetings under the CAMA 1990 but only emphasised that there should be enabling environment. In the same view, Respondent 5 stated, "Application of ICT may be a gradual process, and it would be good."[1110] Similarly, Respondent 1 believed that "there is a prospect for using ICT, but we still have a long way to go."[1111] Responding in the same context, Respondent 2 maintained, "Use of ICT would help in advancing our economy, in advancing our companies and the entire legal framework itself. It is something good. Our biggest challenge is power, but as companies, this should not be a problem, especially for public limited companies considering the bogus pay the management goes home with."[1112] Respondent 9 mentioned, "I think there is need to look into that and make some changes, be it electronically or otherwise. Even the venue of meetings should be considered. There are rented halls now that have computers or tablets on every desk. Why not make use them?"[1113] The above statement by

[1108] R1 (Lecturer), interviewed by researcher, Jos, Nigeria, November 6, 2016.
[1109] R7 (Shareholder activist), interviewed by researcher, FCT Abuja, Nigeria, October 27, 2016.
[1110] R5 (Lecturer), interviewed by researcher, Kano, Nigeria, October 25, 2016.
[1111] R1 (Lecturer), interviewed by researcher, Jos, Nigeria, November 6, 2016.
[1112] R2 (Lecturer), interviewed by researcher, FCT Abuja, Nigeria, October 27, 2016.
[1113] R9 (Company Secretary), interviewed by researcher, FCT Abuja, Nigeria, November 14, 2016.

Respondent 9 pointed out to the fact that there is a prospect for application of ICT in a corporate meeting. However, in a contrary view, Respondent 12 believed, "I can say we are coming up. It is not yet time for Nigeria to adopt the use of ICT in corporate meetings, but you cannot rule out in the future."[1114] Although Respondent 12 maintained that it is not yet time for application of ICT under CAMA 1990 he was optimistic that it might be applied in the near future.

5.10 Conclusion

The significance of ICT in company/corporate meetings cannot be overemphasised. Having in mind the delay in receiving notice of AGM under CAMA 1990, this chapter explained how the application of ICT will improve overall participation of members at the AGM. In another word, any reform that facilitates members participation at the meeting will undoubtedly reflect the twenty-first century's expectations and realities. The incorporation of ICT into the law will promote corporate governance and improve member's participation.[1115]

There is a significant improvement regarding internet access in Nigeria as reported by the NTSSR, 2016[1116] which suggests the prospect of the application of ICT in company meetings. Admittedly, various challenges hinders the application of ICT by public companies in Nigeria. Other challenges include affordability of the internet (data), power supply, the cost of maintenance. However, the findings indicate that recognition

[1114] R12 (Company Director), interviewed by researcher, Kano, Nigeria, November 22, 2016.
[1115] Birnhak, Daniel, "Online Shareholder Meetings: Corporate Law Anomalies or the Future of Governance?" *Rutgers Computer and Technology Law Journal* 29 (2003): 423.
[1116] Nigerian Telecommunications (Services) Sector Report (2016) by the National Bureau of Statistics. Also available online at www.nigerianstat.gov.ng/ (accessed May 20, 2017).

of ICT under Nigerian company law will certainly improve member's participation at the AGM. The next chapter would be the concluding chapter containing summary of findings and recommendations.

CHAPTER SIX

CONCLUSION AND RECOMMENDATIONS

6.1 Introduction

This is the last chapter of the study and would contain summary of findings on the right of members to receive notice of AGM, various remedies available to members that are unable to participate in the AGM due to inability to receive notice as well as the application of information and communication technology (ICT) in company meetings. This chapter summarises and recommend for improvement in the existing company legislation in Nigeria as relates to member's participation at the annual general meeting (AGM) with specific emphasis on the right to receive notice. The chapter would be divided into three sub-heading, namely; summary of findings, recommendations and suggestion(s) for future studies.

6.2 Summary of Findings

This study basically focused on the right of members to receive notice of AGM. In the process, the researcher developed three main objectives in order to complete the study, which were outlined in chapter one of this study. In this regard, the table below indicates the objective, research methods, findings and recommendations in respect of the three research objectives.

Table 6.1 *Research Findings*

Chapter	Research Objective	Research Methods	Findings	Recommendations
Three	To analyse legal provisions relating to notice of AGM of a company in Nigeria	Doctrinal legal research method, comparative method and, Interview	Inadequate	Amendment
Four	To examine remedies available to members that are unable to participate in the AGM due to inability to receive notice	Doctrinal legal research method, comparative method and, Interview	Inadequate	Amendment
Five	To examine the application of ICT in enhancing member's participation in the AGM under Nigerian corporate law.	Doctrinal legal research method, comparative method and, Interview	No recognition for ICT	New provision to incorporate ICT

The details of the findings in this study would be discussed based on the three objectives of the study. Consequently, the first research objective is to analyse legal provisions relating to notice of AGM under Nigerian company law. To achieve this objective, chapter three discussed various legal provisions in the CAMA 1990 that addressed member's participation in the AGM in Nigeria, specifically on the notice of AGM. On the one hand, comparison was made between the provisions of CAMA 1990 with CA 2016 respectively, with a view to improve the CAMA 1990 as relates to the notice of AGM. In addition to the above, various codes of corporate governance, rules and regulations were equally referred to in the course of discussion.

6.2.1 Findings on the Right to Receive Notice of AGM

The right to receive notice of AGM is an important statutory requirement which must be complied with.[1117] However, members right to receive notice is not without hinderance(s). Thus, section 220(1) CAMA 1990 recognised only two methods of service; personal and postal service. Both methods are plagued with various problems which affects right of members to receive notice of the AGM. Postal service is the widely used method. However, members received notice lately, or sometimes after the AGM has taken place. Admittedly, some of the challenges affecting service are not from the company but members themselves. At times members do not regularly update their address of service to the company and this makes it difficult for the company to serve members on time. Another challenge is that some members barely pay for the postal box maintenance and therefore they could not be able to access notices sent to them, on time. On the one hand, some of the companies used to send notice of meeting along with voluminous documents to members which makes it virtually impossible for members to read and comprehend the content of such documents. Therefore, such members feel reluctant to attend the meeting.

On the one hand, section 222 CAMA 1990 requires companies to publish notice of meeting in at least two daily newspapers 21 days prior to AGM. This is to serve as an additional notice apart from the personal or postal service. The findings indicate that publication of notice in two daily newspapers is enough. However, some of these daily newspapers in Nigeria only circulate within some states or region of the country, thereby defeating the object of giving additional notice to the members. The finding

[1117] Amupitan, fn. 248.

further reveals that another means of communication to Nigerians is the radio stations, because, virtually every Nigerian listen to radio. However, it is not legally viable due the fact that members may not necessarily listen to a notice broadcast on radio station. This would still not resolve the issue of service to members.

On the one hand, section 216 stipulates that the place/venue of meeting shall be in Nigeria. The management normally fix the place of AGM to be in the state where the corporate head office of the company is located. The finding indicate that the place of AGM is generally not accessible to majority of the members regarding geographical location. However, rotating the place of the AGM across various states would go a long way to improve member's participation at the AGM.

The examination of various codes of corporate governance in Nigeria reveals that such code of governance have made explicit rules on notice of AGM and participation of members more than the CAMA 1990. However, the codes have a legal vacuum since they cannot be legally enforced in a court of law. Furthermore, the examination of various provisions of the CA 2016 indicates the need for a reform of the CAMA 1990.

6.2.2 Findings on Member's Remedies

The term remedy was not defined under the CAMA 1990. However, in *Jackson v. Horizon Holidays Ltd,*[1118] the court held that remedy is a focal point for all legal rules that operate both on the fact and the law. The existence of certain right entitles one to some remedies.[1119] Shares as personal property confer an individual the right to seek

[1118] *(1975) 1 WLR 1468.*
[1119] Geoffrey Samuel, *Sourcebook on Obligations & Legal Remedies*, 2nd ed. (London, Cavendish Publishing Limited: 2000), 209.

redress in the event of any injury to such right.[1120] In *Prudential Assurance Co. v. Newman,*[1121] the Court of Appeal viewed that allowing a member to maintain a personal action for injury to the company which affects his shares would be contrary to the principle of corporate personality.

There are many remedies under the CAMA 1990 which include personal action, derivative action, remedy against oppressive or prejudicial conduct, investigation of the affairs of a company by the Corporate Affairs Commission (CAC) and even winding up, in certain cases. However, in this study, personal action is the most relevant remedy to members whose right to receive notice or participate in the AGM is violated.[1122] This is based on the view that the right to receive notice is a personal right of a member. The remedy of personal and derivative action does not entitle the applicant to receive damages but only entitles to an injunction or declaration.[1123] Remedy for oppressive conduct under section 311 CAMA 1990 and section 346(1) and (2) CA 2016 entitle an applicant to seek redress where he can show that he has been or likely to be oppressed by the company. The court may order for regularising the affairs of the company and may even lead to winding up of the company. However, procedural requirements to enforce the remedies are difficult to fulfill.

The findings in this regard indicate difficulty faced by the court in drawing a line of distinction between the corporate and personal rights of members and whether it is personal or derivative action that should be filed by a member in a given situation. The findings in chapter four equally reveal that the recognition of a company as a legal

[1120] M. J. Sterling, "The Theory and Policy of Shareholder Action in Tort," *Modern Law Review* vol. 50 Iss 4 (1987): 468-491.
[1121] *(1981) Ch 257.*
[1122] *Associated Registered Engineering Contractors Ltd v. Amaye (1986) 3 NWLR (Pt35) 653.*
[1123] s. 301 CAMA 1990.

personality in *Salomon's case*, as well as the principle of majority rule laid down in *Harbottle's case*, have continued to affect the successful enforcement of both personal and corporate rights of members in Nigeria. The findings indicate that the recognition of corporate personality principle and the majority rule affects the successful enforcement of member's personal right, aside other constraints.

The findings equally indicate that the defence of accidental omission under section 221(1) CAMA 1990 constitutes a barrier to enforcement of member's remedies. In certain times, the management raises accidental omission as a defence, in the event where it is unable to serve members with the notice of meeting. Moreover, there is no definition of what amounts to accidental omission under the CAMA 1990. On the one hand, section 582(1) CA 2016 recognised statutory validation of irregularities where it would not occasion injustice to the parties. However, this is not available under the CAMA 1990 but still the enforcement of remedies under the CAMA 1990 is low.

The finding further indicates that the monetary fine/penalty of ₦500.00 which is equivalent to RM5.5 under sections 213(5); 218(4); 230(4) CAMA 1990 is grossly inadequate. This fine of ₦500.00 is still the applicable penalty today under the CAMA 1990. By comparing between monetary fine under the CAMA 1990 with CA 2016 it is explicit that the fine of ₦500.00 under CAMA 1990 is grossly inadequate. This is in contrast with section 335(1) CA 2016 that imposes a fine of about RM10, 000.00 against the company or its officers. The findings show that, imposing a jail term as a remedy for violation of member's right would go a long way in sanctioning the right of members. Arguably, jail term as a remedy would deter the company from unjustifiable violation of member's rights.

On the one hand, lack of access to justice in Nigeria has hampered the enforcement of member's remedies. The justice system in Nigeria is entirely cumbersome, and cases takes very long time from filing to the judgement of the court. In addition, majority of the members do not know their rights and how to enforce these rights. Despite the presence of shareholder associations that were formed to protect the interest of their members, still the enlightenment and enforcement of member's remedies under the CAMA 1990 is very low. This is mainly because the executives of the shareholder associations prioritised their personal interest against that of members and often sided with the management. Similarly, the regulatory bodies are not living up to expectations, based on the experts from the respondents in this study. The regulators have the statutory power to regulate the activities of shareholder association and to facilitate the enforcement of rights, but it turns out that the regulators were not diligent in discharging this responsibility. In view of the above, there must be a holistic legal approach in reforming member's remedies and its enforcement.

6.2.3 Findings on the Application of ICT

Member's participation is very crucial to having a successful meeting.[1124] Accordingly, application of ICT in AGM under CAMA 1990 would have great impact on member's participation. The findings in this study show that there is no single provision under the CAMA 1990 that recognised the application of ICT in company meetings. However, the recent Rules and Regulation of the Nigerian Stock Exchange (RRNSE 2015) allows companies to apply ICT to serve notice of AGM. The chapter reveals that the CAMA 1990 as the principal company legislation in Nigeria should

[1124] Pound John, "Proxy voting and the SEC: Investor Protection versus Market Efficiency," *Journal of Financial Economics* 29.2 (1991): 241-285.

recognise the application of ICT. Reference to the provisions of section 319(1)(b)-(c) CA 2016 shows that notice of meeting can be sent through electronic medium. Notice can even be published on the company's website. All these are not recognised under the CAMA 1990.

The findings in this regard show that application of ICT would facilitate effective service of notice at a relatively low cost and fast delivery. Accordingly, the introduction of electronic meeting (e-meeting) would go a long way in improving member's participation at the meeting as well as ensure effective service of notice. These are some of the technological advancement that the Nigerian company framework should incorporate and move along the global trend. In this regard, section 216 CAMA 1990 has no recognition for e-meeting. However, section 327(1) & (2) CA 2016 recognised holding of meeting in more than one location. Accordingly, the perspective of the respondents in this study necessitate the need for the CAMA 1990 and other rules to incorporate the application of ICT in AGM. It would improve overall participation of members at the AGM.

It must be pointed out that the application of ICT must start with legal back up through recognition by the CAMA 1990. The implementation should be gradual since certain peculiar challenges may affect the application of ICT in Nigeria, ranging from member's awareness on the use of the internet, internet access (electricity supply, data subscription) and maintenance. However, even with these predicaments, overall, majority of the respondents and the relevant literature viewed that it is time for Nigerian company law to incorporate the application of ICT. This would do away with most of the challenges affecting notice of AGM.

6.3 Recommendations

The right of members to receive notice of AGM is fundamental as it allow members to arrange for the AGM. Accordingly, companies would be more woulding to comply with the requirement of notice when adequate remedies/penalty is provided under the law that would deter the company from violating member's right. Alternatively, incorporating certain provision that facilitate the application of ICT would improve member's participation at the AGM.

6.3.1 Recommendation Regarding Right to Receive Notice of AGM

The right to receive notice of AGM is among the most important rights of members of a company. In this study, however, some challenges hinders the effective exercise of this important right. These include inefficiency of the postal service which prevents members from receiving notice of meeting on time; limited circulation of notice of meeting published in newspapers to a particular region in Nigeria; difficulty in accessing the place of meeting base on geographical location among others.

6.3.1.1 Service of Notice

The method of service of notice particularly through the postal service has been a barrier to effective service of notice. This requires additional method that ensures past delivery of notices. Based on the findings in this study, it is recommended that radio stations would have been a suitable option. However, it is not legally viable as a result it is only suggested to the companies but not to be included in the CAMA 1990 as it may not serve the purpose where members do not listen to the particular broadcast.

This study equally recommends that section 221 CAMA 1990 should include the following: *In the case of personal service of notice, it shall be the responsibility of the members to update their recent addresses with the company in the event of change of addresses.* This provision also tasks members of the company to update their addresses with the company so that the blame should not only be on the management of a company.

6.3.1.2 Publication of Notice in Newspapers

On the publication of notice of meeting in two daily newspapers, the law needs to make specific provision that the two daily newspapers shall be such that circulate within all part of the country because some of the daily newspapers only circulate within a particular part of the country thereby defeating much publicity required. It is recommended that the section 222 CAMA 1990 should be replaced with the following:

> In addition to the notice required to be given to those entitled to receive it, every public company shall, at least 21 days before any general meeting, advertise a notice of such meeting in at least two daily newspapers that circulate within all part of the country.

6.3.1.3 Place of Meeting

Section 216 CAMA 1990 needs to incorporate a provision that would make the place of meeting easily accessible to majority of members. Rotating the place of meeting across various state of the country would improve participation at the AGM. This study recommends the following provision should replace the previous section 216 as follows:

> All statutory and annual general meetings shall be held in Nigeria. The place of meeting shall be accessible and affordable to members, and the

company may rotate the place of meeting to various states where it has many members in such states.

6.3.2 Recommendation Regarding Member's Remedies

The findings in this study reveal that the remedies available to members are grossly inadequate. This calls for review of the current remedies to ensure that the remedies serve as a deterrent to the company, in the event of a violation.

6.3.2.1 Defence of Accidental Omission

Accidental omission as a defence was argued from the perspective to favour the management of the company since a company may refuse to serve a member with the notice of meeting and claim that such a member was accidentally omitted. The management of a company must exercise the defence of accidental omission in the best interest of the company. To this end, this study recommends that the provision of section 221(1) of the CAMA 1990 should be replaced with the following: "*Failure to give notice of any meeting to a person entitled to receive it shall invalidate the meeting unless such failure is an accidental omission in good faith on the part of the person or persons giving the notice."* Furthermore, the CAMA 1990 is silent as to what amount to accidental omission which is left for the court to decide. The findings in this study reveals the need for the CAMA 1990 to define what amounts to accidental omission. This would make it clearer for members to seek redress in the event members were not serve with the notice without justification. To this end, accidental omission should mean an act or omission that happened without inadvertence by the officer/company.

6.3.2.2 Five Hundred Naira as a Penalty

The monetary penalty imposed by section 213(5) CAMA 1990 against the company for failing to call AGM is viewed as grossly inadequate in the present situation. From the perspective of the respondents in this study, they are unanimous on the upward review of the penalty. This study recommends that the penalty is reviewed upward to go in line with the current realities. Section 213(5) CAMA 1990 should be replaced with the following:

> If default is made in holding a meeting of the company in accordance with subsection (1) of this section, or in complying with any directions of the Commission under subsection (2) thereof, the company and every officer of the company who is in default, shall be guilty of an offence and be liable to a fine imposed by the regulators which shall be subject to periodic review.

Penalty regarding contents of a notice. This study recommends that section 218(4) should be replaced with the following:

> In every case in which a member is entitled, pursuant to section 230 of this Act, to appoint a proxy to attend and vote instead of him, the notice shall contain with reasonable prominence, a statement that the member has the right to appoint a proxy to attend and vote instead of him and that the proxy need not be a member of the company, and if default is made in complying with this subsection as respects any meeting, every officer of the company who is in default shall be guilty of an offence and liable to imprisonment of less than three months or to a fine imposed by the regulators which shall be subject to periodic review.

6.3.2.3 Jail Term as a Remedy for Members

The current remedies under the Nigerian company do not have jail term as a remedy. Although, most of the violations by a company were viewed as an offence with option of fine. The respondents in this study indicate the need to incorporate jail term as a remedy to members. This would deter the company and would

improve compliance with the legal requirements on the right of members to receive notice and vote at the AGM. The following is recommended under section 213 CAMA 1990:

> If default is made in holding a meeting of the company in accordance with subsection (1) of this section, or in complying with any directions of the Commission under subsection (2) thereof, the company and every officer of the company who is in default, shall be guilty of an offence and be liable to imprisonment for not more than three months or to a fine imposed by the regulators which shall be subject to periodic review.

6.3.2.4 Enforcement of Remedies

The access to justice and delay in the administration of justice in Nigeria to a large extent affects the enforcement of member's remedies. This is not only peculiar to company law, but the administration of justice in general. In this regard, there is need to adopt Alternative Dispute Resolution (ADR) as one of the mechanisms to enforce member's remedies. It is expected to ensure that members get redress on time, without the undue delay and expenses. There is no provision that recognise the use of ADR in enforcing member's remedies. To this end, section 299 CAMA 1990 should provide that: "*Members may resort to arbitration a dispute resolution mechanism to enforce remedies provided under this Act."* The relevant rules that recognise the use of arbitration in resolving dispute is Rule 20.6 of the Rules and Regulations of the Nigerian Stock Exchanges 2015 (RRNSE 2015).

6.3.2.5 Member's Awareness

The findings in this study suggest that a significant number of shareholders in Nigeria are not adequately informed about their right and remedies and how to enforce the remedies. This makes the shareholders in a disadvantage position, often at the mercy of the management of the company. In view of this challenge, this study recommends

that section 299 CAMA 1990 should have a clear provision that would mandate the management of companies to educate and enlighten its members on their right, remedies and how to enforce them. This would go a long way in making members fully informed about their rights and how to exercise these rights. The new provision in the CAMA 1990 should read: "*It shall be the responsibility of a company to educate its members regarding their rights and the enforcement of such right, be it at the annual general meeting or any other forum that members can be reached."* Furthermore, a penalty is recommended against a company that fails to educate its members regarding their rights (particularly on the notice of AGM) and how to enforce such rights. This study recommends that the CAMA 1990 should provide that: "*Failure of a company to educate its members regarding their right (on notice) shall be an offence and the company shall be liable to imprisonment for a term not exceeding one month or a fine imposed by the regulators which shall be subject to periodic review."* This provision would make companies to be more proactive in ensuring that it organise a forum where members of the company would be enlightened. This would also make members of the company informed and willing to exercise of their right when they are enlightened and therefore achieve the purpose and intent of the law, particularly on the right to receive notice of AGM.

6.3.2.6 The Role of Regulatory Bodies in Facilitating the Enforcement of Member's Remedies

In this study, the findings reveal that regulatory bodies in Nigeria, specifically, the CAC and the Securities and Exchange Commission (SEC) are not doing as expected in terms of making shareholders informed about their rights and its enforcement (particularly on notice of AGM). In this regard, section 7(e) of the CAMA 1990

empowers the CAC to undertake any activity that would ensure the effective operation of the CAMA 1990 which may include shareholder enlightenment. In the same vein, section 13(s) of the Investment and Securities Act 2007 (ISA 2007) mandates the SEC to engage in educating and training of shareholders, but little has been done in that regard. Similarly, Principle 4(vi) of the Code of Corporate Governance for the Insurance Industry in Nigeria 2009 (CCGIIN 2009) recognises the effective exercise of shareholder rights as one of the basic principle of good corporate governance. Additionally, Principle 5.08 of the (CCGIIN 2009) tasks directors to make sure that they assist shareholders to exercise their rights. In view of that, this study recommends that section 7(1)(a) of the CAMA 1990 shall specifically provide that: "*The Corporate Affairs Commission shall engage in educating shareholders about their rights (to receive notice of AGM) in a company and how to enforce such right."* On the one hand, since the ISA, 2007 has made provision on educating shareholders, the SEC shall take proactive steps in ensuring that shareholders are abreast with the requisite knowledge they deserved.

6.3.2.7 The Role of Shareholder Association Towards Enlightenment and Enforcement of Member's Remedies

Most of the shareholder associations do not serve the interest of their members. The associations do little or none in educating its members regarding their rights in a company and how to enforce these rights. In view of that, this study recommends that shareholders should be more proactive themselves. This is because, making a provision under the CAMA 1990 or the ISA 2007 that would mandate shareholders to form an association would be contrary to section 40 of the Constitution of the Federal

Republic of Nigeria 1999 as amended, which provides for the fundamental right of a person to belong to an association or not. However, the CAMA 1990 shall equally incorporate a provision that recognise shareholder associations and part of their responsibility shall be to educate its members regarding their rights and the enforcement of such rights. This study recommends that: "*Shareholders are free to form an association that shall be responsible for protecting the interest of its members. It shall be the responsibility of the association to educate its members regarding their rights in a company and the enforcement such rights".*

6.3.3 Recommendation on the Application of ICT

Based on the findings in this study, there is no provision on the application of ICT under the CAMA 1990. In view of that, this study adopts some of the relevant provision of CA 2016 on the application of ICT in relation to notice of AGM.

6.3.3.1 Electronic Service

In respect of method of service, this study recommends that section 220 CAMA 1990 should incorporate a provision under section 319(2) and 320 of the CA 2016. The following legislative text is recommended under section 220 CAMA 1990: *Notice may be given either in a written, hard copy form or in electronic form. A notice given in electronic form shall be transmitted to the electronic address provided by the member to the company for such purpose or by publishing on the company's website.* Section 320 CA 2016 made the following provision on publication of notice of meeting on a website. This provision should also be incorporated under the CAMA 1990 since no relevant provision is available.

> **(**1) Notice of a meeting is not validly given by a company by means of a website unless it is given in accordance with this section.

(2) When the company notifies a member of the presence of the notice on the website the notification must-

(a) state that it concerns a notice of a company meeting;
(b) specify the place, date and time of the meeting; and
(c) in the case of a public company, state whether the meeting would be an annual general meeting.

(3) The notice must be available on the website throughout the period beginning with the date of that notification and ending with the conclusion of the meeting.

6.3.3.2 E-Meeting

There is no provision under the CAMA 1990 that recognised e-meeting. In view of that, section 327 of CA 2016 should be incorporated under section 216 CAMA 1990 to facilitate e-meeting. The provision reads:

> Subject to the provision of the articles, a company may convene a meeting of members at more than one place using any technology or method that enables the members of the company to participate and to exercise the member's right to speak and vote at the meeting. The main place of the meeting shall be in Nigeria and the chairman shall be present at the main place of the meeting.

6.3.4 Recommendation(s) for Future Studies

This study cannot be said to have covered every aspect on the right of participation of members in AGM. The data collected in this study is mainly doctrinal, comparative and complemented by qualitative interview, as such future studies should focus on a quantitative study to ascertain from the individual members/shareholders regarding their right to receive notice of AGM. Similarly, future studies should also focus on the other aspect of AGM including voting, resolutions among other issues. Additionally, future studies should examine the right of members of a private company to receive notice of AGM. Finally, future studies should focus on other classes of meeting,

namely statutory and extra ordinary general meeting as this study mainly focus on the AGM and the rights of institutional members regarding participation in the AGM.

6.4 Conclusion

Overall, this thesis recommends that in order to improve member's participation in the AGM in Nigeria specifically on the right of members to receive notice of AGM; the CAMA 1990 as the principal legislation must be amended to comply with the current provisions on the review of remedies and the application of ICT in the AGM. Members of the company themselves should be more enlightened, proactive and be willing to protect their rights. The regulatory bodies should wake up to their responsibilities and ensure that members of a company are acquainted with the basic knowledge of their rights (particularly as relates to notice) as well as how to enforce these rights. Similarly, shareholder association should be seen as an association mainly established to protect its members and not otherwise. The shareholder associations should act as the best forum that seeks to enlightened members and assists them in enforcing their rights. These associations should educate members on the importance of participating in the AGM.

On the one hand, the recognition of ICT under the CAMA 1990 will help significantly in ensuring that members of the company receive notice of AGM on time, which will be less costly and effective than the current paper-based notice. Additionally, the incorporation of ICT under the CAMA 1990 will facilitate holding of e-meetings and will improve participation of members in the AGM.

In conclusion, therefore, amending the CAMA 1990 to incorporate provisions that will recognise the application of ICT as well as provide adequate remedies to members will improve greater participation of members in AGM.

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R16 (Regulator), interviewed by researcher, Kano, Nigeria, November 21, 2016.

R17 (Regulator), interviewed by researcher, FCT Abuja, Nigeria, November 22, 2016.

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R3 (Lecturer), interviewed by researcher, Kano, Nigeria, October 26, 2016.

R4 (Lecturer), interviewed by researcher, Zaria, Kaduna, Nigeria, November 24, 2016.

R5 (Lecturer), interviewed by researcher, Kano, Nigeria, October 25, 2016.

R6 (Shareholder activist), interviewed by researcher, Kano, Nigeria, November 21, 2016.

R7 (Shareholder activist), interviewed by researcher, FCT Abuja, Nigeria, October 27, 2016.

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APPENDICES

Appendix A

Interview Protocol

Introduction and appreciation

My name is Magaji Shamsuddeen, Ph.D. Candidate in Law, School of Law, Universiti Utara Malaysia, Sintok, Kedah Malaysia. I wish to thank you for giving me an opportunity to meet you today, despite your tight schedule. I am grateful.

Objective of the Interview

I am presently conducting research on "Improving Member's Participation at Annual General Meeting under Nigerian Corporate Law." It is my pleasure to inform you that you have been selected to take part in this research based on your position and vast experience in the area, which I am optimistic, would have a significant contribution to this research.

Confidentiality

Great significance is attached to your responses and opinion in order to achieve the objectives of this research. The responses/opinion would, therefore, be kept confidential and would mainly be used for this research and your identity would remain undisclosed. Subject to your kind permission, I would like to take note of your responses and opinion. I equally wish to use an audio device in order not to miss out important issues. This would help me in transcribing and analysing the data correctly.

Format and Length of the Interview

This interview is expected to finish within an hour time and would cover four (4) key areas.

How to Contact me after the Interview

In the event you need to contact me after this interview, you can reach me through the following mobile lines: +2348067696998 (Nigerian Line); +60103788835 (Malaysia Line); email deeneemagaji@gmail.com

Clarification

Please do not hesitate to ask me for any clarification/question or explanation regarding any of the issues stated earlier.

Section One: Background of the Interviewee and His/ Her Organisation/Institution

1. Name, position, organisation/ institution of the interviewee
2. Date of the interview
3. Place of the interview
4. Nature of activities carried on by the organisation/ institution

Section Two: Members Participation at Annual General Meeting under Nigerian Corporate Law

1. The Nigerian Companies and Allied Matters Act 1990 (CAMA 1990) recognised members right to receive notice and to participate in the AGM. In your understanding, what is the legal basis for these rights?
2. Research has shown that some members of a company do not receive notice of AGM on time and at certain times after the AGM was held, mainly due to

postal delay. What do you think affects service of notice of AGM through postal service?

3. Do you think proper service of notice can improve member's participation in the AGM?
4. The CAMA 1990 requires management of the company to publicise notice of AGM in two (2) national newspapers, in addition to paper-based notice. Do you see this as enough publicity to members?
5. Research has shown that management of a company tends to fix venue of AGM that is not easily accessible to members, even though that is against the Code of Corporate Governance for Public Companies in Nigeria (CCGPCN). In your own view, what can be done to ensure that members of a company are carried along in choosing the place/venue for AGM?
6. What do you think are the legal problems that affects member's right to receive notice of AGM under Nigerian corporate law and how could they be resolved?

Section Three: Member's Remedies

1. Under CAMA 1990 members that were not served with notice of AGM have right to invalidate the meeting, except in cases of failure due to "accidental omission" on the part of the management. How do you see accidental omission as an exception that absolves management from liability?
2. The CAMA 1990 imposed a penalty of five hundred Naira (₦500.00) against any director that failed to convey AGM. This penalty is entirely different with what is obtainable in other jurisdictions like Malaysia. Do you think the penalty under CAMA 1990 would serve a deterrent to the management?
3. Do you think that the remedies available to members are easily enforceable?

4. How can you relate the enforcement of remedies to the issue of *locus standi* which has become a barrier to member's action?
5. Do you think the current penalty under CAMA 1990 is adequate to the members or not?
6. What other types of remedies would you recommend?

Section Four: Application of Information Communication Technology (ICT) in Corporate Meetings under Companies and Allied Matters Act 1990

1. Various jurisdictions in the world have provisions on the use of ICT in a corporate meeting. There is no such provision under CAMA 1990. What is your view on the use of ICT to serve notice of AGM?
2. Do you think the use of ICT would ensure prompt service of notice of AGM?
3. Email, websites and other avenues were used in other jurisdictions to disseminate notice of AGM. Do you advocate that they should replace paper-based notice or they should complement one another?
4. What method(s) would you recommend being included under Nigerian corporate law?
5. In Malaysia, for example, there is provision recognising e-meeting to complement physical meeting. What is your opinion regarding the introduction of e- meetings under Nigerian corporate law?
6. Do you think the application of ICT can improve member's participation in the AGM in Nigeria?

Shareholder executives were specifically asked other questions in addition to the above. These are:

1. What effort has the shareholder association being doing towards the enlightenment of members regarding their rights of participation in the AGM; member's remedies and the enforcement?
2. What can you say about the agitation that the management of companies compromises shareholder associations?
3. Do you think the regulators are doing enough to enlightened members regarding their rights of participation in the AGM (particularly on notice of AGM; remedies and how to enforce them?

On the one hand, regulators were further asked the following questions:

1. As one of the regulators what have you been doing to enlighten members regarding their rights (particularly on notice of AGM; remedies, and enforcement?
2. There are agitations that regulatory bodies now put more emphasis on generating revenue to the government rather than regulating the activities of companies in Nigeria. What is your view on this?

Section Five:

Do you wish to add anything or share more on other important issues? In the absence of anything, this is the end of this interview session.

Remarks

I am so much grateful to you for taking time to respond to the questions. Thank you once again.

Appendix B

Recommendations for Amendment Regarding Notice of Meeting of AGM

The Affected Law and the Reflection Required	The Extant Provisions	The Recommendations for Amendment
The CAMA 1990-Amendment	**Section 220: Service of Notice** (1) A notice may be given by the company to any member either personally or by sending it by post to him or to his registered address, or (if he has no registered address within Nigeria) to the address, if any, supplied by him to the company for the giving of notice to him.	(1A) In the case of personal service of notice, it shall be the responsibility of the members to update their recent addresses with the company in the event of change of addresses.
The CAMA 1990-Amendment	**Section 222: Additional Notice/Publication in Two Daily Newspapers** In addition to the notice required to be given to those entitled to receive it in accordance with the provisions of this Act, every public company shall, at least 21 days before any general meeting, advertise a notice of such meeting in at least two daily newspapers.	In addition to the notice required to be given to those entitled to receive it in accordance with the provisions of this Act, every public company shall, at least 21 days before any general meeting, advertise a notice of such meeting in at least two daily newspapers that circulate within all part of the country.
The CAMA 1990-Amendment	**Section 216: Place of Meeting** All statutory and annual general meetings shall be held in Nigeria.	(A)The place of meeting shall be accessible and affordable to members and the company shall rotate the place of meeting to various states where it has

		many members in such states.

Appendix C

Recommendations for Amendment Regarding Remedies

The Affected Law and the Reflection Required	The Extant Provisions	The Recommendations for Amendment
The CAMA 1990-Amendment	**Section 221(1) Failure to give Notice/Accidental Omission** Failure to give notice of any meeting to a person entitled to receive it shall invalidate the meeting unless such failure is an accidental omission on the part of the person or persons giving the notice.	Failure to give notice of any meeting to a person entitled to receive it shall invalidate the meeting unless such failure is an accidental omission in good faith on the part of the person or persons giving the notice.
The CAMA 1990-Amendment	**Section 213: Annual General Meeting: Default** (4) If default is made in holding a meeting of the company in accordance with subsection (1) of this section, or in complying with any directions of the Commission under subsection (2) thereof, the company and every officer of the company who is in default, shall be guilty of an offence and be liable to a fine of ₦500	If default is made in holding a meeting of the company in accordance with subsection (1) of this section, or in complying with any directions of the Commission under subsection (2) thereof, the company and every officer of the company who is in default, shall be guilty of an offence and be liable to a fine imposed by the regulators which shall be subject periodic review.
The CAMA 1990-Amendment	**Section 218: Contents of Notice** (4) In every case in which a member is entitled, pursuant to section 230 of this Act, to appoint a proxy to attend and vote instead of him, the notice shall contain with reasonable prominence, a statement that the member has the right to appoint a proxy to attend and vote instead of him and that the proxy need not be a	In every case in which a member is entitled, pursuant to section 230 of this Act, to appoint a proxy to attend and vote instead of him, the notice shall contain with reasonable prominence, a statement that the member has the right to appoint a proxy to attend and vote instead of him and that the proxy need not be a

	member of the company, and if default is made in complying with this subsection as respects any meeting, every officer of the company who is in default shall be guilty of an offence and liable to a fine not exceeding ₦500.00.	member of the company, and if default is made in complying with this subsection as respects any meeting, every officer of the company who is in default shall be guilty of an offence and liable imprisonment or to a fine imposed by the regulators which shall be subject periodic review.
The CAMA 1990- New Provision	**Enforcement of Remedies: No provision for Alternative Dispute Resolution under CAMA 1990**	Members may resort to any of the alternative dispute resolution mechanism to enforce remedies provided under this Act.
The CAMA 1990- New Provision	**Member's Awareness: No Provision mandating Companies to Educate its Members on their Rights**	It shall be the responsibility of a company to educate its members regarding their rights (on notice of AGM) and the enforcement of such right, be it at the annual general meeting or any other forum that members can be reached, Failure of a company to educate its members regarding their right shall be an offence and the company shall be liable to imprisonment for a term not exceeding one month or a fine imposed by the regulators which shall be subject periodic review.
The CAMA 1990- Amendment	**Section 7: Functions of the Corporate Affairs Commission** (1) The functions of the Commission shall be to-(a) subject to section 541 of this Act, administer this Act including the regulation and supervision of the formation, incorporation, registration, management, and winding up of companies under or pursuant to this Act.	The Commission shall engage in educating shareholders about their rights (particularly on notice of annual general meeting) in a company and how to enforce such right.

The CAMA 1990- New Provision	**The Role of Shareholder Association towards the Enforcement of Member's Remedies: No Provision under the CAMA 1990.**	Shareholders are free to form an association that shall be responsible for protecting the interest of its members. It shall be the responsibility of the association to educate its members regarding their rights (particularly on notice of annual general meeting) in a company and the enforcement of such rights.

Appendix D

Recommendations for Amendment Regarding the Application of ICT

The Affected Law and the Reflection Required	The Extant Provisions	The Recommendations for Amendment
The CAMA 1990- New Provision	**Section 220: Service of Notice** (1) A notice may be given by the company to any member either personally or by sending it by post to him or to his registered address, or (if he has no registered address within Nigeria) to the address, if any, supplied by him to the company for the giving of notice to him.	Adopted section 319(2) CA 2016 (1)(A) Notice may be given either in a written, hard copy form or in electronic form. A notice given in electronic form shall be transmitted to the electronic address provided by the member to the company for such purpose or by publishing on a website.
The CAMA 1990- New Provision	**Publication of Notice of Meeting on Website: No Provision recognising the publication of Notice on a Website**	Adopted section 320 CA 2016 (1) Notice of a meeting is not validly given by a company by means of a website unless it is given in accordance with this section. (2) When the company notifies a member of the presence of the notice on the website the notification must— (a) state that it concerns a notice of a company meeting, (b) specify the place, date and time of the meeting, and (c) in the case of a public company, state whether the meeting would be an annual general meeting. (3) The notice must be available on the website throughout the period beginning with the date of that notification and ending with the conclusion of the meeting.

The CAMA 1990- New Provision	**Meeting of Members at two or more Places: Section 216 of CAMA 1990 has no provision on e-meeting**	Adopted section 327 CA 2016 with few changes (1) Subject to the provision of the articles, a company may convene a meeting of members at more one place using any technology or method that enables the members of the company to participate and to exercise the member's right to speak and vote at the meeting. (2) The main place of the meeting shall be in Nigeria and the chairman shall be present at the main place of the meeting.

Appendix E

The List of Respondents

S/No	Name	Organisation	Position	Place of Interview
1	Prof. Joash O. Amupitan	Academic	Professor of Law	Residence
2	Dr. Dahiru Jafaru Usman	Academic	Senior Lecturer	Office
3	Muhammed Bello	Academic	Lecturer/ Sub-Dean	Office
4	Dr. S.A Afiniga	Academic	Senior Lecturer	Office
5	Dr. Ahmad Rabiu	Academic	Deputy Dean	Office
6	Dr. Faruq Umar	Shareholder Activist	President AARS	Residence
7	Mohammed Gambo Fagge	Shareholder Activist	Vice President AARS	Residence
8	Sunny Nwosu	Shareholder Activist	National Coordinator, ISAN	Residence
9	Umar Jibril	Company	Secretary/Legal Adviser	Office
10	Abdullahi Sani Kabara	Company	Secretary/Legal Adviser	Office
11	Ahmed Abubakar	Company	Secretary/Legal Adviser	Residence
12	Sani Umar	Company	Deputy Managing Director	Office
13	Dr. Abdullahi Rabiu Maikano	Company	Director	Office
14	Abdullahi Abubakar	Company	Director	Residence
15	Abdullahi Abubakar	Corporate Affairs Commission	State Head	Office
16	Isa Isa	Regulators	Compliance Officer	Office
17	Yerima Ahmed	Regulators	Compliance Officer	Office